

Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

**Testimony on LB 811
Before the Education Committee
Nebraska Legislature**

February 28, 2023

**Bradley A. Meurrens
Public Policy Director
Disability Rights Nebraska**

Good afternoon Senator Murman and members of the committee. For the record, my name is Brad B-R-A-D Meurrens M-E-U-R-R-E-N-S and I am the Public Policy Director with Disability Rights Nebraska, the designated Protection and Advocacy organization for persons with disabilities in Nebraska. I am here today in opposition to LB 811.

Just to be clear, the safety and security of teachers, administrators, and students is of paramount concern to us. Establishing and maintaining a safe and secure teaching environment and culture is also fundamental to the ability of teachers to teach and students to learn.

As the 2017-2018 Civil Rights Data Collection indicates¹, students with disabilities comprise approximately 13% of the national student population, but represent 80% of the use of restraints. A report by the National Disability Rights Network² shows that children with disabilities can suffer serious bodily harm and even death when being restrained. The Governmental Accountability Office³ found hundreds of cases of alleged abuse and death related to the use of restraint and seclusion on school children. Students with disabilities get swept up in neutral school policies on discipline, including restraint. Disability Rights Washington provides the link between this bill and restraint policy: “Restraint involves physical intervention or force used to control a student by restricting their freedom of movement. It is a personal restriction that immobilizes or reduces the ability to move one’s torso, arms, legs, or

¹ US Department of Education, “2017-18 Civil Rights Data Collection: The Use Of Restraint And Seclusion On Children With Disabilities In K-12 Schools” <https://www2.ed.gov/about/offices/list/ocr/docs/restraint-and-seclusion.pdf>. See page 6 for percentage of enrollment and physical restraint use.

² National Disability Rights Network, 2009, “School is Not Supposed to Hurt: Investigative Report on Abusive Restraint and Seclusion in Schools”, available at: <http://www.ndrn.org/images/Documents/Resources/Publications/Reports/SR-Report2009.pdf>

³ Governmental Accountability Office, GAO-09-719T, “Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers” (May 19, 2009) , available at: <http://www.gao.gov/new.items/d09719t.pdf>

Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

head freely.”⁴ Additionally, “When a school official physically restrains a student, s/he is using force for the purposes of controlling a disruptive student who poses an imminent threat to his or her own safety or the safety of others.”⁵

One of the most significant mantras of the disability community is “nothing about us without us”. However, to the best of my knowledge LB 811 has not had any input from families with students with disabilities or who have been restrained, or disability advocates. The language has not changed much if at all from previous years, despite the consistent and persistent language recommendations posited by us and others. For all the professions of the need to listen to the “second house”, the 8-year history of this bill runs completely counter. Parents, advocates, families, educators, and others that have shown up at the hearing on this bill year after year, but have had their suggested improvements ignored.

Again, as in all previous iterations of this bill, we are not convinced this bill is necessary. Under Rule 10, schools are *already required* to have a policy on the use of restraint to control disruptive or potentially injurious student behavior. These policies are for any and all students, not just students with disabilities, and proves their relevance (emphasis added). One needs only to compare *existing* school/district policies and the *existing* 2010 NDE Guidance Document⁶ to see the significant language deficiencies in this bill:

- Millard Public Schools policy⁷: “***As a part of the emergency procedures in place in our schools, any student who poses a significant imminent risk of injury to him/herself or others may be physically restrained and/or placed in seclusion by school staff in accordance with District Rule 5495.2.*** These actions could occur along with other emergency actions such as calling the police. Significant violations of the law including ***assaults on students and staff, will be reported to the police.*** The building administrator or designee will make reasonable efforts to ***notify the parent/guardian no later than the end of business on the school day on which the physical restraint/seclusion occurred.*** The parent will be notified of the circumstances leading up to the physical restrain/seclusion and be given a point of contact for additional

⁴ Kadlec, A. et al (2023) “Coming Into the Light: An Examination of Restraint and Isolation Practices in Washington Schools”, available at <https://www.disabilityrightswa.org/wp-content/uploads/2023/02/Restraint-and-Isolation-Report-dist.pdf>

⁵ Hawley, C. (2020). “No Holds Barred: The Use Of Restrictive Behavioral Intervention In Missouri Public Schools”, *Missouri Law Review*, Fall 2020, pg. 1171)

⁶ Peterson, R. (2010). Developing School Policies & Procedures for Physical Restraint and Seclusion in Nebraska Schools. A Technical Assistance Document. Lincoln, NE: Nebraska Department of Education, available at https://www.education.ne.gov/wp-content/uploads/2017/07/Restraint-Seclusion_final_guidance_document_6-22-10.pdf

⁷ Millard Public Schools Board policy on restraint available at <https://www.mpsomaha.org/print/pdf/node/46008>

Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

information. ... A. ***Physical restraint is appropriate only when a student is displaying physical behavior that presents significant imminent risk of injury to the student or others, and the student is demonstrating the intent and the ability to cause significant imminent injury.***

- Omaha Public School policy⁸: ***“Physical restraint may be used only in situations in which the student's behavior poses an imminent danger of physical harm to the student or others. Destruction of or damage to property, unless it creates the risk of injury to the student or others, is not a permissible basis for using physical restraint.”***
- North Platte District policy⁹: ***“Physical restraint may be used in the following circumstances: To prevent a student from completing an act that would result in injury to the student or others when there is a substantial risk that the student would commit the act...Destruction of or damage to property does not present a substantial risk of personal injury unless personal injury would be caused as a result of the destructive act. For example, throwing sharp or heavy objects when others are present or the person whose property is about to be destroyed is likely to react physically if the person’s property were destroyed...”***

Most of the existing school policies addressing the use of restraint are more detailed and prescriptive than the language proposed in LB 811. What happens to those policies? Which one should teachers follow? Are schools expected to erase their policies to conform to the watered-down definitions and process in the bill? If school personnel are unclear about their rights and responsibilities that should prompt a question about are the districts, their counsel, and administrators educating their personnel as to what their school policies, authorities, and scope of educator responses are to these situations?

In addition, we continue to have concerns about the vague language of this bill. For example:

- We are wary of “reasonable” as the standard for application and immunity. This standard is too lax and subjective. Such subjective interpretation of risk or dangerousness leads to increased restraints:

“According to another survivor, when asked if she had a sense for why school personnel restrained and isolated her, she shared that it was a

⁸ Omaha Public Schools Board policy on restraint, visited 2/9/21 available at:

<https://district.ops.org/Portals/0/District/Board%20of%20Education/Most%20Current%20WHOLE%20BOOK%20POLICY%20MANUAL%20-%20December%2014%202020.pdf?ver=l6z4KKTgImgv8Sm17Cn9IQ%3d%3d>

⁹ North Platte Public Schools policy on restraint, available at

<https://meeting.sparqdata.com/Public/Book/124?docTypeId=321&file=dc39b1c8-34d1-4db9-aaa8-34a68a6685e6>, visited 2/9/21

Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

“[c]ombination of me already being overwhelmed with a sensory issue and then being asked to do something and saying no. [School personnel] interpreted that as aggression or going to be violent at some point, and started being defensive and looking like they were going to get physical, which would escalate me.” She cited the example of her resistance to doing a writing assignment in English class and her paraeducator’s ensuing response “pushing” and “pestering” her to comply which escalated her and culminated in her restraint and isolation.¹⁰

- There is no definition of “physical intervention”.
- As we have commented *every single time* in the past on this bill, there needs to be qualifying language such as “imminent threat” and “serious bodily injury”.
- The language about “inflicting bodily pain” for “disapproved behavior” is confusing. Perhaps what is meant is that restraint will not be used for discipline, punishment, or staff convenience—that’s the phrasing most of the existing policies use.
 - How does one identify if the restraint is inflicting bodily pain? The physical risk of injury to both student and staff indicate that avoiding bodily pain will likely be difficult. We are unclear how restraining elementary students doesn’t inflict bodily pain?
 - What happens if a school personnel violates this pain/punishment prohibition? LB 811 is completely silent. Accountability is critical as the experience in California demonstrates:

“According to the California Education Code, schools are required to notify parents and guardians of students within “one school day” of any use of seclusion or restraint. However, there is no enforcement mechanism or repercussions to ensure that schools follow this requirement. Although California has fairly robust protections for public school students with disabilities, these protections are only effective when those administering them are held accountable for their actions.”¹¹
- Who decides reasonability—especially when reasonability prevents professional/administrative discipline (at page 7, line 29) and that is the basis for school personnel’s blanket immunity

¹⁰ Supra note 4 at page 22

¹¹ Kirkman, S. (2022) “Abuse At The Hands Of Educators: Analyzing The Use Of Seclusion And Restraints In K-12 Public Schools Across America”, *Wake Forest Journal of Law and Policy*, January, page 3)

Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

- Where is the debriefing? This bill does not provide for any attempts to understand any offending behavior, how to help the student avoid being restrained in the future, or any positive behavior intervention supports? Debriefing is crucial: “As is evident in Isaiah's case, it is critical for parents to have the opportunity to speak with school staff following a student's seclusion and/or restraint to ensure the continued safety and proper treatment of students with disabilities.”¹²
- We note that LB 811 requires a robust policy for removal of students (see page 8 lines 4-10) like “use a discipline process that is proactive, instructive, and restorative”, but not for restraining them; removal of students requires additional supports and services for that student (see LB 811 page 8, lines 23-24) but not when they are restrained; or provide “appropriate instructional or behavioral interventions or supports have been implemented to increase the likelihood the student will be successful” (page. 8, lines 19-24).
- The training may be offered to other school personnel and the training only needs to be “similar” to the training that teachers, administrators, etc. receive (page 11, line 3-9) and the training doesn't match the categories of personnel that would be authorized to use physical intervention.
 - We note that all school personnel should have an awareness of all school plans involved in this training—we wonder why this awareness of school plans would not include the existing school policies/plans on the use of restraint? This could also be included in Sec. 2 (e) on page 11, line 4 by inserting the requirement that that behavioral awareness training include awareness of existing school policy on restraint and seclusion, too.

There are various alternatives to increase both student and school personnel safety which have been demonstrated in other states and there is a wealth of expertise from Nebraska parents, teachers, administrators, advocates, and others. The state needs to listen to parents/advocates/educators who have lived experience, academic, or functional expertise and engage them in a serious deliberative policy discussion to strengthen or create appropriate state policy to regulate and reduce the incidences of dangerous physical force used on students.

Disability Rights Nebraska recommends LB 811 not advance.

¹² Ibid, page 5