



**Testimony on LB 1056
Before the Education Committee
Nebraska Legislature
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**Bradley A. Meurrens, MPA
Public Policy Director
Disability Rights Nebraska**

Good afternoon Senator Groene and members of the Education 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 for Disability Rights Nebraska, the designated Protection and Advocacy organization for people with disabilities in Nebraska. I am here today in strong support of LB 1056.

The nation is moving toward reducing the use of physical force and/or restraint to address student behavior. The recent *Every Student Succeeds Act* contains provisions to have states report how they will assist schools to reduce: 1. The use of aversive behavioral interventions that jeopardize students' health and safety, 2. Bullying and harassment, and 3. The use of discipline practices that remove students from the classroom.

Restraint use presents a serious physical health risk to those involved. Reports by the National Disability Rights Network¹, the Governmental Accountability Office (GAO)² and others show that children can suffer serious bodily harm and even death at the hands of teachers or school staff when using restraint techniques, especially when they are not appropriately trained (and even when they are). The National Disability Rights Network has identified incidents where students were subjected to restraint and/or seclusion and have been physically injured, traumatized, or died as a consequence. The GAO found hundreds of cases of alleged abuse and death related to the use of restraint and seclusion on school children during the past two decades.

Restraint and seclusion are disproportionately used on students with disabilities. The Civil Rights Data Collection (CRDC), which includes self-reported data on 99 percent of the public school districts in the nation, indicates that "schools restrain and seclude students with disabilities at higher rates than students without disabilities: during the 2013-14 school year,

¹ 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>

² 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>

students with disabilities were subjected to mechanical and physical restraint and seclusion at rates that far exceeded those of other students. Specifically, students with disabilities served by the Individuals with Disabilities Education Act (IDEA) represented 12% of students enrolled in public schools nationally, but 67% of the students who were subjected to restraint or seclusion in school.”³ Furthermore, the 2009 GAO investigation found that most of the hundreds of allegations they identified related to children with disabilities and 90% of the closed cases involved children with disabilities or a history of “troubled” behavior (children in these cases were diagnosed with autism or other conditions, including post-traumatic stress disorder and attention deficit hyperactivity disorder).

Even when prohibited, students with disabilities are restrained as a disciplinary measure even when the student’s behavior appeared not to be aggressive. The GAO reports that, for example, teachers restrained a 4-year-old with cerebral palsy in a device that resembled a miniature electric chair because she was reportedly being “uncooperative” and teachers confined a child to a small, dirty room 75 times over the course of 6 months for offenses such as whistling, slouching, and hand waving.

Additionally, students with disabilities are disproportionately suspended at rates higher than students without disabilities. The CRDC data demonstrate that students with disabilities have the highest risk of being suspended⁴ and are suspended disproportionately compared to students without disabilities. This is particularly true for students with behavioral, emotional, and/or behavioral health needs⁵.

Results from the CRDC 2011-2012⁶

- With the exception of Latino and Asian-American students, more than one out of four boys of color with disabilities (served by IDEA) — and nearly one in five girls of color with disabilities — receives an out-of-school suspension.
- Students with disabilities (served by IDEA) represent a quarter of students arrested and referred to law enforcement, even though they are only 12% of the overall student population.

³ See Office of Civil Rights, December 28, 2016, “Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities”, supra note 1

⁴ Ibid, at p. 21

⁵ See Note 5, at p. 1

⁶ U.S. Department of Education Office for Civil Rights (2014) “Civil Rights Data Collection: Data Snapshot (School Discipline)”, March 21, available at <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>.

Results from the CRDC 2013-2014⁷

- Students with disabilities in grades K-12 are disproportionately suspended from school
- Students with disabilities served by IDEA (11%) are more than twice as likely to receive one or more out-of-school suspensions as students without disabilities (5%).
- More than one out of five American Indian or Alaska Native (22%), Native Hawaiian or other Pacific Islander (23%), black (23%), and multiracial (25%) boys with disabilities served by IDEA received one or more out-of-school suspensions, compared to one out of ten white (10%) boys with disabilities served by IDEA.
- One in five multiracial girls with disabilities served by IDEA (20%) received one or more out-of-school suspensions, compared to one in twenty white girls with disabilities served by IDEA (5%).

Disability Rights Nebraska strongly supports LB 1056 as data collection is necessary to understand the scope of these practices, the underlying causes leading to their use, and ultimately the mechanisms by which these practices can be reduced or alleviated. Data and incident reporting is the lynchpin and must be more robust than just a “number count” (emphasis added):

“In addition to training in positive behavior supports and other evidence-based practices, a crucial failure in the protection of children from restraint and seclusion is the lack of documentation and reporting when incidents do occur. No one really knows the extent of the problem because most schools are not required to report this information or notify parents, and not a single entity exists that collects information or statistics regarding restraint and seclusion. Even in states that limit restraint and seclusion to emergency interventions for immediate safety threats, the lack of a documentation or reporting requirement makes enforcement virtually impossible, causing children to suffer restraint and seclusion as an everyday disciplinary strategy for the staff’s convenience. Reporting these incidents would be a prospective way to have the necessary information to identify problems and attempt to find meaningful solutions. Although two states currently require reporting, they only report the total number of restraints and seclusions.”⁸

⁷ U.S. Department of Education Office for Civil Rights (2016) “2013-2014 Civil Rights Data Collection: A First Look”, June 7, available at <http://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>

⁸ Darcie Ahern Mulay, “Keeping All Students Safe: The Need for Federal Standards to Protect Children from Abusive Restraint and Seclusion in Schools”, 42 STETSON L. REV. 325, 333 (2012), available at <http://www.stetson.edu/law/lawreview/media/42-1mulay.pdf>

We would offer a language change on page 3, line 1, removing the words “learning or behavioral” and leave it as just “identified disability”. Students with other disability types are subject to the use of these techniques, and so the data collected should also reflect the broad use of these disciplinary techniques on Nebraska’s students, especially those with disabilities.

We urge the committee to advance the bill.