

**Testimony on LB 595
Before the Education Committee
Nebraska Legislature
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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 opposition to LB 595.

While I think everyone here will agree, the safety and security of teachers, administrators, and students is of paramount concern and has an impact on the ability of teachers to teach and students to learn. However, LB 595's approach—to authorize school personnel to restrain or use physical force on students—is misguided and fraught with policy deficits. It is our suggestion that this bill be indefinitely postponed and an interim study be conducted to gather all pertinent stakeholders, including parents students, especially students with disabilities, around the table to work toward developing not only a better understanding of how to address issues of school violence and misbehavior but also to plan how Nebraska can strengthen policies to reduce, and ideally eliminate, the use of aversive behavioral interventions (e.g., restraint and seclusion). The problems inspiring this legislation are complex and require a thoughtful, planned, and deliberate process which is starkly lacking in LB 595. The use of restraint (and seclusion) is a major issue for Disability Rights Nebraska and other Protection and Advocacy organizations nationwide. Even if an interim study is not fashioned, we have plans to meet with state educational organizations and schools through this year to continue a dialogue on restraint (and seclusion) use in Nebraska schools.

Under Rule 10, Nebraska schools are required to adopt a restraint and seclusion policy, meaning that the school personnel identified in the bill already have the authority to perform restraint on students. A major concern is that the policies adopted by school districts are not uniform and can vary widely from district to district. We fear that LB 595 could have the unintended consequence of allowing schools to roll back their policies to conform to this state law or at least create confusion as to which lead to follow. Furthermore, since the use of

restraint is already allowed yet behavioral problems persist, the solvency of LB 595's approach is questionable at best.

LB 595 flies in the face of national efforts to reduce the use of restraint (and seclusion).

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. The Office of Civil Rights within the U.S. Department of Education has admonished that "the use of restraint and seclusion may result in discrimination against students with disabilities, thereby violating Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II) (both as amended)".¹

National and state-level data and reporting reveal several important issues regarding restraint use in schools which provide reasons to vote down LB 595:

1. Restraint use presents a serious physical health risk to those involved.

Reports by the National Disability Rights Network², the Governmental Accountability Office (GAO)³ 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

¹ Office of Civil Rights, December 28, 2016, "Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities", available at https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term

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>

abuse and death related to the use of restraint and seclusion on school children during the past two decades.

2. 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, 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.”⁴ 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).

3. Even when prohibited, students with disabilities are restrained as a disciplinary measure even when the student’s behavior appear 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.

4. Lack of adequate safeguards and precautions risks abuse.

LB 595 contains no provisions for staff training, no delineation regarding what staff are authorized to use restraint, or what types of restraint would be allowed. Furthermore,

⁴ See Office of Civil Rights, December 28, 2016, “Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities”, supra note 1

this bill has no provision for staff to utilize less aversive techniques to de-escalate potential situations first, nor does it give any guidance as to when situations would require the use of physical force or restraint. With no definition of “physically violent”, “destructive behavior” or “school property”, and with no qualifying language (which is already contained in many Nebraska school district policies on restraint/seclusion) such as “*imminent* danger of *serious* physical harm to self or others”, LB 595’s “Restrain first, ask questions later” approach provides too much latitude and is unclear on too many critical issues for it to be an effective law or a vehicle to secure the safety of students with disabilities.