

Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

**Testimony on LB 147
Before the Education Committee
Nebraska Legislature
February 11, 2019**

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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 opposition to LB 147.

To be clear, we believe the safety and security of teachers, administrators, and students is paramount. However, LB 147 is at best largely unnecessarily, codifying authorities that teachers and administrators already have, and at worst a policy which could result in more student and staff injuries because it green-lights immediate use of very dangerous techniques for both those being restrained and those doing the restraining. The issues inspiring this legislation are complex and require a thorough, inclusive, and data-driven examination to identify root causes and effective policy solutions.

In order to be accredited, Nebraska school systems must adopt a restraint and seclusion policy. I have included a copy of a few with my testimony. While these schools' policies may differ somewhat on content (that's a discussion for another time), they are consistent on a few things: they are applicable to the whole student body, not just students with disabilities; they have a different definition of "physical restraint" than this legislation and a sharper, qualified description of when to use (e.g., "substantial risk", "imminent danger", "serious bodily injury"); they do not authorize physical restraint in response to property destruction unless a unless it creates the risk of injury to the

student or others. We are concerned that LB 147 contradicts many school districts' existing policies on the use of physical restraints in response to student behavior, sending a confusing signal to school personnel about what rules or protocol to follow and LB 147 could persuade schools to dilute their existing restraint policies to match this legislation. Teachers and school staff seem to already have the authority to act as LB 147 prescribes both in many of the existing school district restraint policies and in state law (see annotation to Nebraska Revised Statute 79-258: "This section provides authority for school teachers and administrators to use physical contact short of corporal punishment to the degree necessary to preserve order and control in the school environment, and authorizes an acceptable level of incidental physical contact, as is necessary for teachers to promote personal interaction with their students. *Daily v. Board of Ed. of Morrill Cty. School Dist. No. 62-0063*, 256 Neb. 73, 588 N.W.2d 813 (1999).")

Students with disabilities are already disproportionately restrained by physical force¹ and we fear that the language in this bill will serve to increase incidents of restraint use. While the bill does not intend to target students with disabilities specifically, the data indicate that they will be the students most likely to be restrained for a variety of reasons—the behavior might be a manifestation of their disability (identified or not) or it could be misinterpreted by school personnel. Furthermore, we are concerned that with the authority granted by the this bill to grab the hands or wrists of students, students will often struggle, ratcheting up the amount of force applied to the student, increasing substantially the risk of injury to student, staff, or both (especially if school personnel are not trained appropriately).

With no clear meaning of " becomes physically violent", "exhibits destructive behavior" or "school property" (destruction of school property could mean snapping a pencil or tearing up a piece of paper); with no requirement that staff have any training to identify when a student is "dangerous to self or others"; with no qualifying language such as "imminent danger of serious physical harm to self or others"; with no requirement to

¹ See Civil Rights Data Collection 2018 report on school climate and safety available at <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>

attempt any alternatives to restraint or de-escalation with the student; with no requirement that staff who would be restraining students have any training in the appropriate method of exercising safer restraint practices; and finally with no administrative/judicial review of the reasonableness/appropriateness of the teacher's action, LB 147's "Restrain first, ask questions later" approach provides too much latitude and is unclear on too many critical issues.