

Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

May 18, 2021

Dear Senators:

Disability Rights Nebraska is the designated Protection and Advocacy organization for Nebraskans with disabilities. We write to voice our opposition to the proposed amendment to LB 529, AM 1422.

First, we are dismayed that **yet again**, this amendment suffers from a lack of input from disability advocates, disability advocacy organizations, and families of students with disabilities. As the 2017-2018 Civil Rights Data Collection shows, students with disabilities comprise approximately 13% of the national student population but represent 80% of the use of restraints. While AM 1422 is intended to provide clarity, it fails at that task and still ignores a whole swath of critical components that we, other disability advocates, and families have repeatedly called for.

AM 1422 is missing important pieces. AM 1422 contains thin language regarding de-escalation, but is silent about de-briefing--discussing techniques or supports to *prevent* offending behavior. AM 1422 just tells parent(s)/guardian that staff laid hands on their student but ignores any consideration of prevention. If a student engages in offending behavior repeatedly, all AM 1422 prescribes is **more** physical contact. No attempt to figure out the underlying causes and address them, but more and more physical force.

AM 1422 requires that school policies adhere to the Individuals with Disabilities Education Act (IDEA). We are unclear as to what this means, considering the IDEA does not address restraint or seclusion use.

Yet again, we raise issue with the definitions. While we appreciate the attempt to accommodate our earlier issues with the lax definitions of AM 990, we still have questions that should be addressed before codifying statutory language. For example, why did the drafters of AM 1422 choose to use a definition of "emergency safety intervention" from Rhode Island? We noted this language is also used in at least one Nebraska school's restraint policy, but not by other Nebraska school districts. How has this definition affected the use of restraint/seclusion or emergency safety intervention? Is this a sufficient definition? What is "body contact" (as the "only source of physical restraint")? Secondly, the additional language after "...only source of physical contact" is entirely redundant or irrelevant. The description of emergency safety

intervention (see page 3, lines 4 -10) would not meet the criteria of an emergency; same for the language in “emergency safety situation” (see page 3, lines 13-19).

AM 1422 is unclear about the use of prone restraint—is sitting on a student (body contact) allowable?

Before adopting AM 1422 or enacting any legislation authorizing the use of restraint on students, this body should review in depth the 2010 Nebraska Department of Education’s [guidance document](#) on school restraint policies. This document provides clear and direct guidance on the appropriate *content* and *purpose* of school restraint policies—important guardrails missing from AM 1422.

AM 1422 is redundant and unnecessary. AM 1422 calls for schools to adopt policies regarding the use of emergency safety intervention, but as we have noted, ***schools are already required to have these policies under Rule 10***. The problem is, as we raised in [our 2014 report](#), that these policies are not uniform across districts and do not have any content requirements. The language in AM 1422 says schools may use a state guidance document, but that is the root cause of the non-uniformity. AM 1422 just codifies the problem.

Finally, as we have consistently argued, this body should not work to undo or dilute the existing school policies on restraint use. Often these policies are more rigorous and thorough than this proposed amendment. Rather, the legislature should work to ensure that the school district policies addressing the use of these techniques/interventions are uniform with more robust and prescriptive content requirements. Since the regulatory framework has already been established, why are we re-inventing the wheel here? Legislative action should be to require the Department of Education to work with families and individuals who have lived experience with restraint/seclusion, schools, advocates, and other stakeholders to develop uniform district/school policies on restraint with improved substantive content. The US Department of Education’s principles, as well as the Nebraska Department of Education’s 2010 Guidance Document, should be used to guide this work. Given their background and specific expertise, asking the Department of Education to lead a transparent, inclusive collaboration on this is only proper.

Disability Rights Nebraska recommends AM 1422 not be adopted.

Sincerely,

Brad Meurrens

Public Policy Director

Disability Rights Nebraska