

Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

April 22, 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 990.

First, we are dismayed that yet again, disability advocacy organizations were not approached for input in this amendment. As the 2017-2018 Civil Rights Data Collection (CRDC) [indicates](#), 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 Network shows that children with disabilities can suffer serious bodily harm and even death when being restrained. The Governmental Accountability Office (GAO) [found](#) hundreds of cases of alleged abuse and death related to the use of restraint and seclusion on school children. We need to move cautiously and deliberately. While AM 990 calls for a “proportionate” response, there is no consideration for input from those families and individuals *disproportionately* subjected to restraint.

Yet again, we raise issue with lax definitions. For example, “emergency safety interventions” is defined as the use of restraint, **but there is no definition of what a restraint is** or what an appropriate restraint would be. AM 990 would allow the unrestricted use of dangerous restraint techniques like prone restraint. The lack of a definition would allow staff to use mechanical restraints such as strapping a child to a chair or taping them to the wall. The lack of a restraint definition would allow chemical restraints to be used to sedate children. It allows staff to do **whatever they feel without any accountability**. Furthermore, if teachers are unclear on what to do in emergency situations or situations where student behavior is disruptive, we fail to see how AM 990 provides clarity.

AM 990 is missing other important pieces as well. AM 990 contains no language regarding de-briefing or discussing techniques or supports to prevent offending behavior (although there is required a discussion of supports for a student’s return to the classroom). AM 990 just tells parent(s)/guardian that staff laid hands on their student but ignores the discussion about prevention—what goal is achieved by just announcing that a student has been restrained other than a school thumbing its nose at parents’ concerns about the safety and treatment of their student. What about prevention?

AM 990 again ignores attempts to identify and stem repeated violations. If a student engages in offending behavior repeatedly, all AM 990 prescribes is **more** physical contact. No attempt to figure out the underlying causes and address them, but more and more physical force. Again, what about prevention?

Before adopting AM 990 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 990.

Additionally, AM 990 is redundant and unnecessary. On page 5, lines 4-5 of AM 990 call 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. We find it interesting that AM 990 would require such policies to have content about training, but nothing else. This stands in stark contrast to the [Nebraska](#) and [federal](#) guidance documents. Given the physical and emotional trauma that these practices produce for all parties involved, we have consistently suggested that the legislature should be focused on improving the existing school policies on restraint use to provide adequate and meaningful protections for both students and staff. Disability Rights Nebraska continues to stress that these policies reflect and actualize, at a minimum, the principles developed by the U.S. Department of Education and the Nebraska guidance document for policies and procedures on the use of restraint. These principles emphasize that every effort should be made to *prevent* the need for the use of restraint and any emergency safety intervention must be consistent with the child's dignity and right to be free from abuse. The goal in presenting these principles is to help ensure that all schools and learning environments are safe for all children and adults.

Finally, as we have consistently argued, given the risk to both teachers and students from the use of physical restraint, 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 990 not be adopted.

For further information or comment, please contact me at your convenience: brad@drne.org.

Sincerely,

Brad Meurrens

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Disability Rights Nebraska