

Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

**Testimony on LB 673
Before the Education Committee
Nebraska Legislature**

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Good morning Senator Walz and members of the 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 with Disability Rights Nebraska, the designated Protection and Advocacy organization for persons with disabilities in Nebraska. I am here today in opposition to LB 673.

Just to be clear, the safety and security of teachers, administrators, and students is of paramount concern. Establishing and maintaining a safe and secure teaching environment and culture is also fundamental to the ability of teachers to teach and students to learn. While we appreciate the attention paid to behavioral health training in the bill, we cannot support the provisions outlining the use of force on students in sections 4-6.

As the 2017-2018 Civil Rights Data Collection (CRDC) indicates¹, 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 Network² shows that children with disabilities can suffer serious bodily harm and even death when being restrained. The Governmental Accountability Office (GAO)³ 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 deliberatively.

Again, as in all previous iterations, there are technical issues with the language. We are wary of “reasonable” as the standard for application and immunity. This standard is too lax and subjective. While some might see the “teacher dragging a 3rd grader 90-feet for insubordination” incident in North

¹ US Department of Education, “2017-18 Civil Rights Data Collection: The Use Of Restraint And Seclusion On Children With Disabilities In K-12 Schools”
<https://www2.ed.gov/about/offices/list/ocr/docs/restraint-and-seclusion.pdf>. See page 6 for percentage of enrollment and physical restraint use.

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>

Platte as “reasonable”, many do not (including the teacher himself)⁴. Moreover, the teacher admits that he was not in a fit of rage or frustrated when he dragged the student: “I was in no way trying to cause him harm or punish him...He needed to be supervised.” Compare with the language in 673 prohibiting “inflicting bodily pain” for “disapproved behavior”. This only underscores the need for precision and clarity. There is no definition of “physical intervention”. As we have commented in the past, there needs to be qualifying language such as “imminent threat” or “serious bodily injury”. Who is an “affected” parent for notification and the bill is too vague here. We would strongly recommend comparing the language of LB 673 regarding physical intervention with the existing school/district policies and the NDE Guidance Document to highlight the myriad of language deficiencies.

We are not convinced that the discipline portion of LB 673 is necessary. Under Rule 10, schools are already required to have a policy on the use of restraint and seclusion to control disruptive or potentially injurious behavior.

- Omaha Public School policy: “Physical restraint may be used only in situations in which the student’s behavior poses an imminent danger of physical harm to the student or others. Destruction of or damage to property, unless it creates the risk of injury to the student or others, is not a permissible basis for using physical restraint.”⁵
- North Platte District policy: “Physical restraint may be used in the following circumstances: To prevent a student from completing an act that would result in injury to the student or others when there is a substantial risk that the student would commit the act...Destruction of or damage to property does not present a substantial risk of personal injury unless personal injury would be caused as a result of the destructive act. For example, throwing sharp or heavy objects when others are present or the person whose property is about to be destroyed is likely to react physically if the person’s property were destroyed...”⁶

Often the existing school policies addressing the use of restraint are more detailed and prescriptive than the language proposed in LB 673. What happens to those policies? Are schools expected to erase their policies to conform to the watered-down definitions and process in the bill? It should be

⁴ Omaha World Herald, June 28, 2014, “North Platte Teacher Who Dragged Student 90 Feet Will Keep His Job”, available at https://omaha.com/news/north-platte-teacher-who-dragged-student-feet-will-keep-his/article_cbdac1ce-fed5-11e3-ace8-001a4bcf6878.html. ““In retrospect, I shouldn’t have done that,” Woodhead told the board during his testimony. “I shouldn’t have pulled him. That was bad judgment on my part.”

⁵ Policies And Regulations Of Douglas County School District No. 0001 Omaha Public Schools, visited 2/9/21 available at: <https://district.ops.org/Portals/0/District/Board%20of%20Education/Most%20Current%20WHOLE%20BO%20OK%20POLICY%20MANUAL%20-%20December%202014%202020.pdf?ver=l6z4KKTgImgv8Sm17Cn9IQ%3d%3d>

⁶ North Platte Public Schools policies, available at <https://meeting.sparqdata.com/Public/Book/124?docTypeId=321&file=dc39b1c8-34d1-4db9-aaa8-34a68a6685e6>, visited 2/9/21

incumbent upon the districts, their counsel, and administrators to educate their personnel what are the policies, authorities, and scope of responses.

Given the risk to both teachers and students from the use of physical restraint/force, this body should not work to undo schools' existing and more rigorous regulation; 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—such as is suggested in Section 5 for student removal.

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 (NDE) Guidance Document⁷, be used to guide this work. Given their background and specific expertise, asking the Department of Education to lead a collaborative, transparent, inclusive collaboration on this may be the most proper forum. Isn't this Section 6 anyway?

Disability Rights Nebraska recommends LB 673 not be advanced.

For further information or comment, please contact me at your convenience: brad@drne.org or 402-474-3183

⁷ See US Department of Education (2012) "Restraint and Seclusion: Resource Document", available at <https://www2.ed.gov/policy/seclusion/restraint-and-seclusion-resource-document.html> and Peterson, R. L. (2010). Developing School Policies and Procedures for Physical Restraint and Seclusion in Nebraska Schools. Lincoln, NE: Nebraska Department of Education, available at http://www.education.ne.gov/documents/Restraint-Seclusion_final_guidance_document_6-22-10.pdf