

Testimony on Legislative Resolution 314  
Before the Education Committee  
Nebraska Legislature  
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Good afternoon Senator Sullivan 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 Specialist for Disability Rights Nebraska, the designated Protection and Advocacy organization for Nebraska.

First off, I wish to thank Senator Kolowski for introducing this resolution. LR 314 is important because it begins a necessary discussion about the use of restraints and seclusion in schools, a risky and dangerous practice for all of our students, especially those with disabilities. The impact of these techniques is not limited to the student who is restrained or secluded. Restraint and/or seclusion can pose a safety risk to school faculty and staff as well as negatively impact other students who witness the restraint/seclusion. The use of restraint and seclusion in schools is a complex issue that, to be successful in reducing the use of these techniques, will require an open, robust, and ongoing dialogue among a wide variety of stakeholders.

The use of restraint and seclusion has garnered much national attention over the past few years. Several national reports have been published documenting the practice of restraint and seclusion use in schools and the resulting injuries to students and staff. A few of these have been included in my handouts.

Disability Rights Nebraska conducted a literature review and produced a research report, "AT RISK WITH ONLY GUIDANCE FOR PROTECTION: Restraint and Seclusion Policy for Nebraska Students" (which is also included in my handouts) highlighting the risks posed by these techniques, Nebraska policy, and key areas which should be addressed in order to reduce their use. I would like to now give you an overview of what we found.

1. Restraints and Seclusion are Dangerous

The Governmental Accountability Office reports "restraint or seclusion can be dangerous to individuals in treatment settings because restraining them can involve physical struggling, pressure on the chest, or other interruptions in breathing", and "children are subjected to restraint or seclusion at higher rates than adults and also are at greater risk of injury."<sup>1</sup> The Governmental Accountability Office investigation found hundreds of cases of alleged abuse and death related to the use of restraint and seclusion on school children during the past two decades.

Other examples of restraint and seclusion use have been documented by the National Disability Rights Network. Their 2009 report "School is not Supposed to Hurt" documents not only incidents where students subjected to restraint and/or seclusion were physically

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<sup>1</sup> Governmental Accountability Office, 1999, GAO/HEHS-99-176, "Improper Restraint or Seclusion Procedures Places People at Risk", available at <http://www.gao.gov/archive/1999/he99176.pdf>

injured, traumatized, or died as a consequence, but also some of the techniques used on them, including:<sup>2</sup>

- Students strapped down to their chairs, even wheelchairs;
- Students pinned on the floor by several adults (sometimes for hours at a time);
- Students grabbed and dragged into rooms;
- Students held in arm locks;
- Students handcuffed;
- Students placed in coffin-like boxes and cells; and
- Students locked in closets

## **2. Restraints and Seclusion Use is not Limited to Emergency Situations and is Often Used Without Parental Consent or Notification**

The Governmental Accountability Office reported that children were restrained as a disciplinary measure—even when the student’s behavior appeared not to be aggressive:

- Teachers restrained a 4-year-old with cerebral palsy in a device that resembled a miniature electric chair because she was reportedly being “uncooperative”.
- An Individualized Education Plan for a 9-year-old with learning disabilities specified that placement in a timeout room could be used to correct inappropriate behavior, but only as a last resort. However, teachers confined this child to a small, dirty room 75 times over the course of 6 months for offenses such as whistling, slouching, and hand waving

The GAO reports that students were restrained without prior parental consent or explicit parental instructions not to use restraint/seclusion were ignored:

- Parents in another case gave a teacher explicit instructions to stop restraining their 7-year-old child and secluding her for prolonged periods of time. Despite these instructions, the restraints and seclusions continued.
- A residential day school implemented a behavior plan, without parental consent, that included confining an 11-year-old autistic child to his room for extended periods of time, restricting his food, and using physical restraints. The child was diagnosed with post-traumatic stress disorder as a result of this treatment.

## **3. Restraints And Seclusion Are Disproportionately Used On Students With Disabilities**

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<sup>2</sup> National Disability Rights Network, “School is not Supposed to Hurt” 2009 and 2010 editions, available at <http://www.ndrn.org/en/issues/abuse-and-neglect/restraint-and-seclusion.html>. In particular, see the “Chronicles of Harm” section of the 2009 report, pp. 13-26, where these incidents and others are detailed.

The Governmental Accountability Office reported 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).

The U.S. Department of Education reports a disproportionate use of restraints on children with disabilities—while students with disabilities represented 12% of students in their study sample, they represented nearly 70% of students who were physically restrained in school.<sup>3</sup>

#### 4. Patchwork National and State Policies

There are no federal laws which govern the use of restraint and seclusion in U.S. schools.

Consequently, states are left to regulate the use of restraint and seclusion themselves. The result is an uneven and confusing array of laws, regulations, and other policies that still give wide latitude to school staff in responding to student behavior.

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*“Even the states with safeguards offer varying protections. Some states have certain safeguards, but not others. Some protect more against restraint than seclusion or vice versa, allowing the staff’s choice of procedure to determine the degree of protection. The form of these protections varies. Some states have statutes; others have regulations; and some have both. In many states, regulations are more easily changed than statutes....”<sup>1</sup>*

-- Jessica Butler (2014), “How Safe Is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies” available at: [www.autcom.org/pdf/HowSafeSchoolhouse.pdf](http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf)

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The Nebraska Department of Education requires that school districts have a policy on the use of restraint and seclusion in order to be accredited.<sup>4</sup> The Nebraska Department of Education has issued guidance that provides suggested examples of a school district restraint/seclusion policy and some issues to consider/include in a district policy (e.g., stronger criteria for use of restraint/seclusion, requirements for staff and student debriefing, parental notification as soon as possible—ideally before the end of that school day, and documentation). However, the guidance document is just that—guidance—it is non-binding, merely suggestive. It only *suggests* language to use and issues to consider or

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<sup>3</sup> U.S. Department of Education, 2012, “The Transformed Civil Rights Data Collection”, available at: <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf>

<sup>4</sup> Nebraska Department of Education, “RULE 10: Regulations and Procedures for the Accreditation of Schools”, Title 92, Nebraska Administrative Code, Chapter 10: “011.01E Each school system has a seclusion and restraints policy approved by the school board or local governing body.”, p. 28, available at [http://www.education.ne.gov/Legal/webrulespdf/RULE10\\_PLEDGE\\_2012.pdf](http://www.education.ne.gov/Legal/webrulespdf/RULE10_PLEDGE_2012.pdf), p. 28

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*“Results indicate that schools with lower socioeconomic status and located in states that did not prohibit corporal punishment or regulate the use of reported restraints in the schools experienced more reported restraint events. “*

-- Lucy Barnard-Brak et al (2014),  
“Factors Associated with the Use of Restraints in the Public Schools”,  
*Education and Treatment of Children,*

include in a school district’s restraint/seclusion policy. Consequently, there is little uniformity in the regulation of restraint and seclusion in Nebraska schools—different districts and different schools will have different policies and different procedures. Furthermore, this establishes a system where student protection and safety is dependent upon where that student lives and/or what school she/he attends.

## 5. Data Collection and Reporting

Given the disparity in school district policy and school procedures pertaining to restraint and seclusion, data collection and reporting requirements may vary. As Dr. Reece Peterson points out we must rely almost solely on parental complaints or media reports to know when restraints or seclusion have been used on a student. Again, the suggestive nature of the state’s guidelines on restraint/seclusion policy sets up a system where these techniques are used with little if any public oversight or awareness.

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*“Since these reports are often the result of parent complaints or media reports, we do not know how many times these procedures are inappropriately employed with students. Yet there does appear to be a substantial number of these situations, and they appear to be scattered across the United States.”*

--Dr. Reece Peterson, Testimony before the House Committee on Education and Labor, 2009, p. 3

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## 6. Recommendations

Nebraska needs to join the ranks of the many states that have taken legislative action on reducing and/or eliminating the use of restraint and/or seclusion in schools. Nebraska needs to re-examine and strengthen its proscription of the use of restraint/seclusion and we believe the legislature is the most appropriate body to do that. Nebraska needs to develop a more uniform set of criteria and standards for the emergency use of these techniques. We agree with Jessica Butler and others that a statutory fix is the best approach as statutes are less likely to change on a whim, and legislative hearings and floor debate are more thorough, transparent, and accountable/accessible to the public.

As we illustrate in our report, as a starting point, potential legislation should consider, but not be limited to, issues relating to:

- Definitions and stringent conditions for the use and type of restraint and/or seclusion;
- Monitoring, Assessment, and Comfort
- Staff Training
- Transparency, data collection and reporting both to the State and to parents

We also suggest that any improvements to the current state restraint/seclusion regulations should be informed by and reflect as much as possible the principles and recommendations set out by the U.S. Department of Education, The United States Senate Health, Education, Labor, and Pensions

Committee, and Daniel Stewart. These principles and recommendations are found on pages 17-23 of our report.

The U.S. Department of Education sums it up:

“...every effort should be made to prevent the need for the use of restraint and seclusion and that any behavioral intervention must be consistent with the child’s rights to be treated with dignity and to be free from abuse. The principles make clear that restraint or seclusion should never be used except in situations where a child’s behavior poses imminent danger of serious physical harm to self or others, and restraint and seclusion should be avoided to the greatest extent possible without endangering the safety of students and staff. The goal in presenting these principles is to help ensure that all schools and learning environments are safe for all children and adults.”<sup>5</sup>

In addition to potential legislation specifically addressing the use of restraint and seclusion in Nebraska schools, this issue raises larger questions and requires examination of a wider range of tools to use in the prevention, de-escalation, and reduction of these techniques. Schools may need more resources available to them, and the surrounding community may need more services, to assist students who have or who are likely to be restrained or secluded.

This concludes my testimony this afternoon. I would be happy to entertain any questions the committee may have.

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<sup>5</sup> U.S. Department of Education, 2012, “Restraint and Seclusion: Resource Document”, available at <http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>, p. iii