



May 1, 2021

Senator Joseph Rafferty, Chair
Representative Michael Brennan, Chair
Joint Standing Committee on Education and Cultural Affairs

Re: LD 1373 - *“An Act to Keep All Maine Students Safe by Restricting the Use of Seclusion and Restraint in Schools”*

Dear Senator Rafferty, Representative Brennan, and Members of the Committee on Education and Cultural Affairs:

My name is Atlee Reilly and I am a Managing Attorney at Disability Rights Maine (DRM), Maine’s protection and advocacy agency for individuals with disabilities. Thank you for the opportunity to appear before you today in support of LD 1373 - *“An Act to Keep All Maine Students Safe by Restricting the Use of Seclusion and Restraint in Schools”*. LD 1373, amended as proposed by Representative Millett, would:

- a) Close a loophole that has allowed some private schools to refuse to report the use of restraint and seclusion to Maine DOE;
- b) Eliminate the use of seclusion in Maine schools;
- c) Prohibit the use of restraint if contraindicated based on a student’s disability, or medical or psychiatric condition, or if it would interfere with the student’s ability to communicate in the student’s primary mode of communication; and
- d) Limit the use of restraint to situations where a student’s behavior poses an imminent danger of serious physical injury to the student or others when less restrictive interventions would be ineffective.

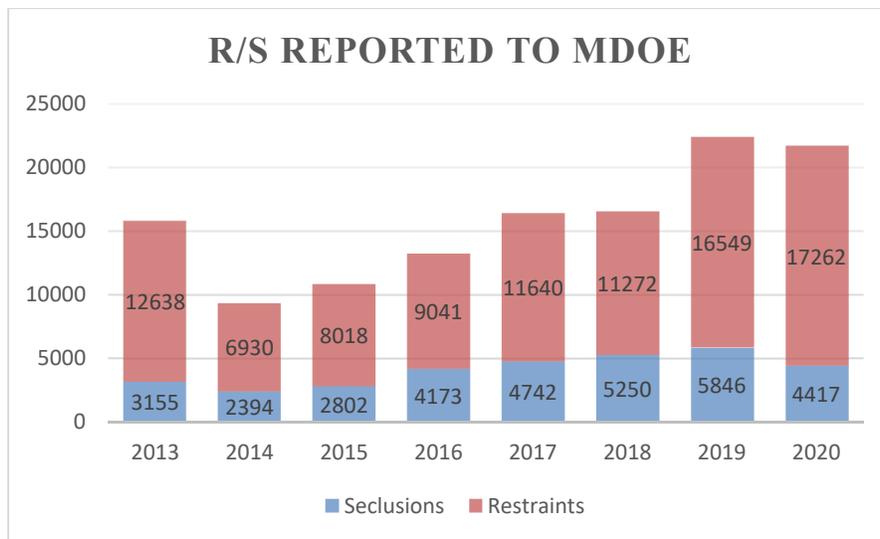
DRM supports all of these changes. DRM reported on these issues in 2017 and again in 2019.¹ We expressed concerns about the use of these dangerous, traumatizing, and ineffective practices,

¹ Disability Rights Maine, *Restraint and Seclusion in Maine Schools: Reviewing the First Four Years of Data Required by MDOE Rule Chapter 33* (2017), <https://drme.org/assets/brochures/CH33-Report.FINAL.pdf>; Disability Rights Maine, *Restraint and Seclusion in Maine Schools: Reviewing the First Six Years of Data Required by MDOE Rule Chapter 33* (2019), <https://drme.org/assets/brochures/CH33.Report.FINAL.2019.pdf>

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as well as the significantly disproportionate impacts on students with disabilities, who endure the vast majority of restraints and seclusions. The situation has not improved.

In short, we have a real problem in Maine. According to the most recent data from the USDOE, Maine restrains more students per capita than any other state and secludes students at the second-highest rate in the country.² At least 90% of seclusions and restraints involve students with disabilities.³ The graph included below illustrates that schools are using restraint and seclusion with disturbing frequency.⁴ And we are going in the wrong direction, with 22,935 reported uses of restraint and seclusion in the 18-19 school year. In addition, while there was a drop in total emergency interventions reported for last school year (21,679), restraint numbers actually increased, which is shocking when you consider the fact that schools were generally closed to in person instruction for the last three months of the year. Due to underreporting, the reality is even worse than these numbers suggest.



² Maine schools restrain more than 5 out of every 1000 students. This is the highest rate in the nation and over 3 times the national rate. Maine schools seclude 4 out of every 1000 students. This is the 2nd highest rate in the nation and 8 times the national rate. These statements are based on data drawn from USDOE, Office For Civil Rights, Civil Rights Data Collection, 2017-18, available at <https://www2.ed.gov/about/offices/list/ocr/data.html> ; and, USDOE enrollment data, Fall 2017, available at https://nces.ed.gov/programs/digest/d19/tables/dt19_203.20.asp ; and, Jodi S. Cohen, ProPublica and Jennifer Smith Richards, Chicago Tribune, “*The Quiet Rooms, National Ban on School Use of Seclusion and Restraint of Students Introduced in Congress*,” Nov. 19, 2020, available at <https://www.propublica.org/article/national-ban-on-school-use-of-seclusion-and-restraint-of-students-introduced-in-congress>

³ Nationally, this number is 78%. See: U.S. DOE, Office for Civil Rights, Civil Rights Data Collection, 2017-18, available at <https://www2.ed.gov/about/offices/list/ocr/data.html>

⁴ MDOE, “Restraint and Seclusion” webpage, available at <https://www.maine.gov/doe/schools/safeschools/restraint> Data is collected pursuant to 05–071 C.M.R. Ch. 33 (2013)

The regulations Maine adopted in 2012 were designed to regulate the use of restraint and seclusion and reduce the use of these dangerous and ineffective responses to behavior. Almost 10 years later, there is a very real concern that Chapter 33 has served to normalize violence against children. Each and every use of restraint should be treated like a true emergency - because the use of an emergency intervention is a signal that something is not working for that child, for that teacher, or in that school. But these numbers, and our experience representing children across the state, make clear that is not the case.

These supposed emergency interventions are often used in the absence of any significant risk of injury or harm. They are regularly used to exert power over students and to control them. And very often, it is the physical intervention itself, or simply the threat of it, that sends students into a fight or flight response and escalates the situation. These statements are based upon our review of many thousands of incident reports. And our work on these issues has made clear that many seclusions and restraints go unreported – we have seen many instances where two-person or backwards escorts (usually used to move students into seclusion) are not documented as restraints. Some schools have systematically failed to document seclusions when a staff member stands in the doorway to act as a door, preventing exit. We have uncovered multiple instances of outright falsehoods in incident reports, seemingly designed to minimize the nature of the seclusion or restraint for families. Our youth are being harmed and traumatized thousands upon thousands of times each year. And many of these youth have difficulty communicating with their families about what happens to them at school. Maine must do better.

So yes, we clearly have a significant problem in Maine. But we also have an opportunity. When Chapter 33 was developed, MDOE obtained input from a variety of places. Here is an excerpt from the input provided by one school administrator at the time:

I believe that great damage is done when a person is physically incapacitated by others with the intent of controlling behavior. The fact that this is done in a systematic way – as a normal or accepted course of action – must certainly damage any budding sense of internal control of the self, and is utterly anti-therapeutic. Our students and families frequently describe situations wherein, for instance, a student is restrained not because he was about to hurt himself or others, but because he would not move to the next classroom. I have personally witnessed similar incidents. In settings where well-meaning people are trained and given permission to utilize this approach, it becomes a frighteningly common tool for gaining compliance; and then learning doesn't happen, students externalize control, and resilience is sacrificed.⁵

⁵ (emphasis added). This is an excerpt from a statement submitted by the current Commissioner of the Maine Department of Education, Pender Makin, then Director of the REAL School. It was provided to MDOE, in or around 2011, in response to a request from MDOE when developing what became Rule Chapter 33. The full letter, which is extremely powerful and well worth reading, is available here: <https://web.archive.org/web/20170228181119/https://www.maine.gov/education/rulechanges/chapter33/makin102810.pdf>

The administrator who drafted this powerful statement is now the Commissioner of the Maine Department of Education. So, while there is nothing to be hopeful about in the numbers, or in how Chapter 33 has been implemented to date, DRM is hopeful that someone who understands these issues so deeply is in a position to help put Maine on a different course.

Recently, Maine Attorney General Aaron Frey signed on to a letter supporting pending federal legislation that would ban seclusion and significantly limit the use of restraint, which contains language identical to LD 1373 in many respects. That letter contained the following: “Isolated confinement and the restraint practices banned by [the Keeping All Students Safe Act] are inherently dangerous behavior interventions that have no therapeutic or educational value, may exacerbate existing mental health conditions, and can cause long lasting emotional trauma.”⁶

The fact that people holding such powerful positions in Maine understand that seclusion and restraint are inherently dangerous and have no therapeutic or educational value, presents a unique opportunity. And this opportunity is coming at a time when Maine is set to receive \$411,303,283 in federal funds to address the impacts of the pandemic related educational disruptions, which can be used to, among other things, implement “strategies to meet the social, emotional, mental health, and academic needs of students hit hardest by the pandemic, including through evidence-based interventions and critical services like community schools.”⁷ Maine schools could devote some of these resources, with the support of all the work being done by MDOE, to expand the use of preventative and evidence based practices and positive behavior interventions and supports, recognizing that the best emergency response is to do the work to avoid an emergency in the first place.

We should use this opportunity to ban the use of seclusion. Seclusion is already prohibited in residential treatment settings in Maine.⁸ And a ban on seclusion would be consistent with language in proposed federal legislation, the Keeping All Students Safe Act.⁹ While federal action may finally be on the horizon, in the meantime, Maine should join the growing number of

⁶ The March 16, 2021 letter, signed by AG Frey and 16 other Attorneys General, is available here: <https://drme.org/news/2021/ag-frey-kassa>

⁷ USDOE Press Release (March 17, 2021), available at: <https://www.ed.gov/news/press-releases/department-education-announces-american-rescue-plan-funds-all-50-states-puerto-rico-and-district-columbia-help-schools-reopen>

⁸ Children’s Residential Care Facilities Licensing Rule, 10-144 CMR Ch. 36 Sec. 5(O)(4) (“Seclusion. The facility must not permit the seclusion of a resident in a locked space. The resident may not be confined alone to any area with the door locked, barred or held shut by staff. Seclusion is prohibited in children’s residential care facilities except for Level 2 facilities. Level 2 facilities are considered inpatient psychiatric facilities for people under the age of 21 for the purposes of the Rights of Recipients of Mental Health Services Who Are Children in Need of Treatment (14-472 CMR Ch. 1) and federal regulation”)

⁹ See: H.R. 8782 (listing seclusion as a prohibited action), <https://www.congress.gov/bill/116th-congress/house-bill/8782?s=1&r=77>

states that have acted to eliminate the use of seclusion in schools. These states include: Georgia, Hawaii, Nevada, Pennsylvania, and Texas.¹⁰

We should use this opportunity to place meaningful restrictions on the use of restraint, including banning prone and supine restraint, and restraints when contraindicated based on a medical or psychiatric condition. And we use take this opportunity to raise the threshold for allowing the use of emergency restraint to situations where there is an imminent danger of serious physical injury and less restrictive interventions would be ineffective.¹¹

Finally, we should ensure that all schools in Maine comply with existing requirements regarding reporting the use of emergency interventions to families and to the Maine DOE.¹²

It is well past time for Maine to address this problem with the seriousness it deserves. Our previous attempts to reduce these practices have failed. We thank Representative Millett for her attention to this important issue and urge the Committee to support LD 1373.

Respectfully Submitted,



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¹⁰ O.C.G.A. § 160-5-1-35. Seclusion and Restraint for All Students. (“Use of seclusion is prohibited in Georgia public schools and educational programs.”); HI Rev Stat §302A-1141.3. (“The use of seclusion, chemical restraint, or mechanical restraint shall be prohibited in public schools regardless of any consent of the student, parents, or guardians.”); NV Rev Stat § 388.473 – (Includes seclusion, defined as “The placement of a person alone in a room where release from the room is prohibited by a mechanism, including, without limitation, a lock, device or object positioned to hold the door closed or otherwise prevent the person from leaving the room;” in a list of aversive interventions); and NV Rev Stat § 388.497 (“A person employed by the board of trustees of a school district or any other person shall not use any aversive intervention on a pupil with a disability.”); 22 Pa. Code § 14.133 (“The following aversive techniques of handling behavior are considered inappropriate and may not be used by agencies in educational programs...Locked rooms, locked boxes or other structures or spaces from which the student cannot readily exit.”); and Texas Education Code § 37.0021 (“A school district employee or volunteer or an independent contractor of a district may not place a student in seclusion.”)

¹¹ These changes are also consistent with proposed federal legislation. See: Keeping All Students Safe Act, H.R. 8782, <https://www.congress.gov/bill/116th-congress/house-bill/8782?s=1&r=77>

¹² In or about September 2018, MDOE began to take the position that private schools, including 60/40 schools, are “not required to do Ch. 33” because “there is a serious question as to whether including the private schools [in Chapter 33] exceeded the Department’s rulemaking authority.” (internal MDOE email obtained pursuant to a DRM FOAA request). Some schools continue to refuse to report and take the position that they do not have to comply with Chapter 33. Putting the reporting requirements in statute will close this purported loophole.