

**Written Testimony on LD 1248**  
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I am an attorney at Drummond Woodsum in Portland, Maine and have been representing public schools for more than 35 years. My focus is on special education, and I regularly work with schools that have to intervene to address bullying and aggression between and among students.

I am writing in support of the amendments to Maine's Restraint and Seclusion law, and here is why.

The proposed changes are more child protective than the current law, and it would permit necessary interventions to stop bullying and intimidation of our most vulnerable children at school. A restraint and seclusion law tells us what level of aggression, bullying and harassment we are willing to tolerate in our schools. Maine's current law says that we in Maine are willing to tolerate bullying, aggression, and harassment of vulnerable children to any degree as long as it falls short of behaviors that present an "imminent danger of serious physical injury." It prohibits physical removal of a bullying, aggressive student if that student's behavior presents a risk of physical injury alone. This means that school staff can only stand back and use their words when they encounter a student bullying and harassing another child, and if their words don't work, they are not allowed to pull and hold that student away from the victim.

This is wrong. Imagine a bully in school holding a younger child and repeatedly punching him in the arm, or repeatedly slamming him against the lockers. This behavior does NOT meet the standard in the current law of an "imminent danger of serious physical injury." School staff should try the least restrictive intervention – use their words, command the bully to stop; try use body positioning while directing that the behavior stop. But if that bully responds by looking up and saying "screw you," the teacher currently can do nothing more than stand there and fruitlessly direct the bully to stop. That is, the staff member must tolerate the continued, traumatic, physical aggression against the victim.

There are more examples. Imagine the same staff member rounding a corner in the hall and encountering an 8<sup>th</sup> grade bully with a younger, 5<sup>th</sup> grade girl pinned against the locker with his hands holding her breasts. This is a deeply traumatic assault. But it does not present an "imminent danger of serious physical injury." Assume the staff member attempts the same interventions described above and again to no avail. Here, too, the current law would not permit the staff member to take hold of that abusive bully and pull and then hold him away from the traumatized victim.

I doubt if many staff members in Maine would fail to physically restrain that bully in these situations. And yet if words fail, and they use this physical intervention, they would be

breaking the current restraint and seclusion law in Maine. Staff should not be forced to break the law in order to do the right thing.

Remember, a restraint and seclusion law tells us what level of student misbehavior we are willing to tolerate without physical efforts to stop it. Again, our current law requires that staff members tolerate and accept abusive, assaultive behavior that will physically and emotionally harm the victim when that behavior cannot be stopped with words or body positioning. Why? Because our more vulnerable children are not getting physically harmed badly enough. Yes, the bullying behavior will hurt them. It may bruise them. It may emotionally scar them, perhaps even for life. But as long as the bullying is unlikely to cause “serious physical injury,” staff cannot physically pull the bully away and hold them until the risk passes.

LD 1248 will fix that problem. Under LD 1248, school officials will still have to use the least restrictive intervention that is likely to stop the student misbehavior. And usually words, or body positioning will do this. But what about those situations when it won’t? Under LD 1248, school staff would be authorized to use physical restraint to stop the assaultive behavior, if that behavior presents an “imminent danger of injury” to others. Thus, if less restrictive interventions would fail, a staff member could intervene and pull away or hold a bully to prevent that child from inflicting imminent physical or emotional injury on the victim.

The proposed change would permit staff to physically pull away and hold a bully, when less restrictive interventions would fail, if that bully is repeatedly punching another child in the shoulder or legs or even face, or if the bully is physically molesting another child, or is screaming abusive language in another child’s face like the “n-word” or the “c-word,” while refusing to stop at the direction of staff. The current law would not permit this intervention. LD 1248 would permit this intervention.

Maine’s restraint and seclusion law tells us all as much about what we are willing to tolerate in schools, as it does about what school staff cannot do. We should never tell our parents and children that they need to put up with assaults at school as long as the physical injuries being inflicted are not “serious.” Or that they need to put up with attacks that present an imminent risk of even the most deeply traumatic psychic injury, just because no serious physical injuries are involved.

The required change in the law is minor – replace “imminent danger of serious physical injury” with “imminent danger of injury.” Of course, LD 1248 keeps in the essential requirement that school staff should always use the least restrictive interventions likely to resolve the problem. But when less restrictive interventions fail, our school staff should be permitted to physically hold a bully when necessary to protect student victims from physical injury or emotional trauma. We owe the most vulnerable children in our schools this change in the law.