

## Maine Education Association

Jesse Hargrove President | Beth French Vice President | Jaye Rich Treasurer  
Rebecca Cole NEA Director | Rachelle Bristol Executive Director

### Testimony

### In Support Of

### LD 1248: An Act Regarding Physical Escort and Restraint and Seclusion of Students in Schools

Jan Kosinski, Government Relations Director, Maine Education Association

Before the Education and Cultural Affairs Committee

April 23rd, 2025

Senator Rafferty, Representative Murphy and other members of the Education and Cultural Affairs Committee,

My name is Jan Kosinski, and I am the Director of Government Relations for the Maine Education Association (MEA). The MEA represents nearly 24,000 educators, including teachers and other educators in nearly every public school in the state, as well as full-time faculty and other professional and support staff in both the University of Maine and Community College systems. Thousands of retired educators continue their connection and advocacy work through the MEA- Retired program.

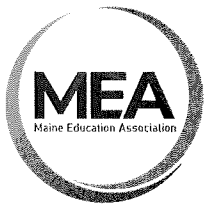
I offer this testimony today on behalf of the MEA in SUPPORT of LD 1248, *An Act Regarding Physical Escort and Restraint and Seclusion of Students in Schools*.

I have worked at the MEA for fifteen years, and many moons ago I completed the education program as an undergraduate and conducted my student teaching experience in West Philadelphia. During this time, not once have I met a teacher or ed tech or educator who wants to restrain a student. Not once. However, as you will no doubt hear today, many educators in our state feel the current law on restraint and seclusion must be adjusted, especially due to the rise of trauma-induced behaviors from students, and a consensus concerning the uptick in dangerous and challenging behaviors from students. The issue of challenging behaviors is happening across our great state, and not a day goes by when the staff at MEA are not counseling members, filing grievances, or helping members who have been injured or harmed or have witnessed other students who have been subjected to injury or harm.

I have said to many of you that when it comes to addressing this issue, the MEA will take an "all of the above" approach. The issue is severe and is causing negative downstream impacts that cannot be ignored. Teachers report to us they are leaving the profession due to classroom and school behaviors from some students and the data from MainePERs regarding the number of teacher quitting underscores this point. We have heard from MEA members and administrators that the behaviors of some students are now causing absenteeism rates for other students to climb, and some families report they are seeking alternatives to their local public school due to the behaviors of some students.

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The MEA has supported efforts like LD 1203, *An Act to Provide Grants to Schools That Contract for Behavioral and Mental Health Services* and LD 858, *An Act to Ensure Behavioral and Mental Health Services Are Available to Students by Providing Grants to Schools That Contract for Those Services* to provide grants to help school districts hire additional mental health supports for students. We support LD 1097, *An Act to Provide De-escalation and Behavior Intervention Training for School Personnel* and LD 1626, *An Act to Improve Professional Development for Educational Technicians and School Support Staff* (scheduled for public hearing on Friday) which seek to provide more professional development to educators to help them address what they are facing in our schools. And we support LD 1398, *An Act Regarding Behavioral Health Support for Students in Public Schools*, which proposes to increase mental health and behavioral supports in school by recognizing these needs in the school funding formula so schools will have the resources to hire professional staff without relying on property taxpayers. All of these bills are about helping educators address the behaviors they are facing and we support all of these bills and we hope all of them are passed and funded. Any effort to help move the dial on this issue, we are likely to support. We know our school districts across the state have varying needs and plans to address the issue of student behaviors, and we hope this Committee and the Legislature will provide a plethora of options and tools to help them address what they are facing.

In 2021, the Legislature passed LD 1373, *An Act To Keep All Maine Students Safe by Restricting the Use of Seclusion and Restraint in Schools*, and this bill became law without the Governor's signature.<sup>1</sup> It is this law that remains the issue today.

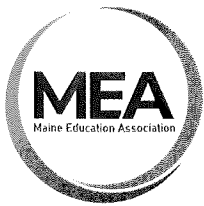
That law inserted the phrase "imminent danger of serious physical injury" into the law. This phrase has become a major concern for schools and has led to unintended consequences that we feel must be corrected.

I can totally understand how the legislators in these seats in 2021 could not have predicted the impact the phrase "imminent danger of serious physical injury" would have on school operations. The term seems clear enough to me. But I must remind the Committee of the role of Drummond and Woodsum attorneys in our state. The attorneys at Drummond and Woodsum serve as the counsel to the overwhelming majority of school districts in our state. In many cases, they represent the school district, the superintendent and administration, and the school board. I have included with my testimony the testimony of Eric Herlan, an attorney at Drummond and Woodsum who has been representing public schools for more than 35 years. Eric submitted this testimony to the Committee, but I included it with my testimony because this testimony really highlights the main points this Committee needs to hear.

As I understand it, the term "imminent danger of serious physical injury" has been interpreted by the attorneys for our school districts to mean that the behavior must pose a real risk of hospitalization. Unless there is a threat that the behavior will result in hospitalization or at least a threat the behavior will result in the need to seek medical attention, educators are told they are prohibited from restraining any

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<sup>1</sup> Please see, LD 1373, 130<sup>th</sup> Legislature, found here: [LD 1373, HP 1007, Text and Status, 130th Legislature, First Special Session](#)



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child. As you can read in the testimony of Mr. Herlan, he provides exact examples of what this means in practice. And the results are not good.

The bill before you makes a slight change and instead changes current law from “imminent danger of serious physical injury” to “imminent danger of injury.” This change is consequential, at least in the eyes of the counsel for many school districts around the state.

The change in language will remove the word “serious” from law, and instead allow educators to intervene if the behavior may not require hospitalization but may result in a trip to the nurse’s office or other disruptions in the school day for the student on the receiving end of the behavior. Throwing someone into a locker, placing hands on the personal body parts of a student, a single punch – none of these actions may rise to the standard of an “imminent danger of serious physical injury” but in all these situations I think we would want educators to step in and, if necessary, stop the behavior before it escalates.

Our schools have the duty to protect all students. Every school is working hard to provide a safe, welcoming learning environment in our schools. But the current language of Title 20-A, Section 4014, is too restrictive and provides too much latitude to the perpetrators of injurious behavior and ties the hands of educators, without doing enough to protect the educators, the students who are experiencing this behavior all too frequently, and the students exhibiting this behavior.

Nothing in this bill will require school districts to move away from their current practices regarding the restraining of students. Districts can continue offering a more restrictive approach than what the bill calls for. But some districts are telling us they need and want this change so educators can intervene more effectively when these things occur, and I would hope the Legislature would oblige.

Thank you for your time and your attention and I will do my best to answer any questions you may have.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-ONE

H.P. 1007 - L.D. 1373

**An Act To Keep All Maine Students Safe by Restricting the Use of Seclusion  
and Restraint in Schools**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 20-A MRSA §4014 is enacted to read:

**§4014. Use of seclusion and physical restraint**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Chemical restraint" means a drug or medication that is not prescribed as the standard treatment of a student's medical or psychiatric condition by a licensed physician or other qualified health professional acting under the scope of the professional's authority under state law that is used on a student to control behavior or restrict freedom of movement.

B. "Covered entity" means an entity that owns, operates or controls a school or educational program that receives public funds from the department, including, but not limited to, public schools, public regional programs, public charter schools, private schools, private schools approved for tuition purposes, special purpose private schools, career and technical education programs, public prekindergarten programs and providers of services pursuant to the provisions of the federal Individuals with Disabilities Education Act, Parts B and C, 20 United States Code, Section 1401 et seq. (2015).

C. "Mechanical restraint" means the use of a device to restrict a student's freedom of movement.

D. "Physical escort" means the temporary, voluntary touching or holding of the hand, wrist, arm, shoulder or back to induce a student to walk to a safe location.

E. "Physical prompt" means a teaching technique that involves voluntary physical contact with a student that enables the student to learn or model the physical movement necessary for the development of a desired competency.

F. "Physical restraint" means a personal restriction that immobilizes or reduces the ability of a student to move the arms, legs or head freely. "Physical restraint" does not include a physical escort, mechanical restraint, physical prompt or chemical restraint.

G. "Seclusion" means the involuntary isolation or confinement of a student alone in a room or clearly defined area from which the student does not feel free to go or is physically denied exit. "Seclusion" does not include a timeout.

H. "Timeout" means an intervention where a student requests or complies with an adult request for a break. Timeout is not seclusion.

I. "Unlawful restraint or seclusion" means:

(1) Mechanical restraint;

(2) Chemical restraint;

(3) Physical restraint or physical escort that is life-threatening, restricts breathing or restricts blood flow to the brain, including prone restraint; or

(4) Physical restraint or seclusion that is contraindicated based on Title 34-B, section 3003 or section 15002 or the student's disability or health care needs or medical or psychiatric condition as documented in:

(a) A health care directive or medical management plan;

(b) A behavior intervention plan;

(c) An individual education plan or an individual family service plan as defined in the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1401 et seq. (2015); or

(d) A plan developed pursuant to the federal Rehabilitation Act of 1973, 29 United States Code, Section 794 (2015) or the federal Americans with Disabilities Act of 1990, Title II, 42 United States Code, Section 12131 et seq. (2009).

"Unlawful restraint or seclusion" does not include a physical escort except as provided in subparagraph (3), a physical prompt, the use of adaptive devices or mechanical supports to achieve proper body position, balance or alignment to allow greater freedom of movement than would be possible without the use of such devices or supports or the use of vehicle safety restraints when used as intended during the transport of a student in a moving vehicle.

**2. Prohibition on unlawful restraint and seclusion; restriction on use of physical restraint and seclusion.** A covered entity that receives state or federal assistance may not subject a student to unlawful restraint or seclusion. A covered entity may use physical restraint or seclusion only if:

A. The student's behavior poses an imminent danger of serious physical injury to the student or another person;

B. Less restrictive interventions would be ineffective in stopping imminent danger of serious physical injury to the student or another person;

C. The physical restraint or seclusion ends immediately upon the cessation of imminent danger of serious physical injury to the student or another person; and

D. The least amount of force necessary is used to protect the student or another person from imminent danger of serious physical injury.

**3. Report on data regarding the use of physical restraint and seclusion.** Each covered entity shall submit to the department an annual report on incidents of physical restraint and seclusion of students of that covered entity that includes:

A. The aggregate number of uses of physical restraint;

B. The aggregate number of uses of seclusion;

C. The aggregate number of students placed in physical restraint;

D. The aggregate number of students placed in seclusion;

E. The aggregate number of students with disabilities and an individualized education program under the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1401 et seq. (2015) or a plan pursuant to the federal Rehabilitation Act of 1973, 29 United States Code, Section 701 et seq. placed in physical restraint;

F. The aggregate number of students with disabilities and an individualized education program under the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1401 et seq. (2015) or a plan pursuant to the federal Rehabilitation Act of 1973, 29 United States Code, Section 701 et seq. placed in seclusion;

G. The aggregate number of serious physical injuries to students related to physical restraint;

H. The aggregate number of serious physical injuries to students related to seclusion;

I. The aggregate number of serious physical injuries to staff related to physical restraint; and

J. The aggregate number of serious physical injuries to staff related to seclusion.

**4. Technical assistance.** The department shall, using existing resources, provide technical assistance to covered entities by developing, implementing and providing technical assistance to support evidence-based programs that reduce the likelihood of physical restraint or seclusion, and support students in reducing behavior that can result in physical restraint or seclusion, such as developmentally appropriate, positive behavior interventions, functional behavioral interventions, mental health supports, restorative justice programs, trauma-informed care and crisis and de-escalation interventions.

**5. Rules.** The department shall adopt or amend rules to carry out the purposes of this section. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

**Written Testimony on LD 1248  
April 19, 2025**

**Eric R. Herlan  
Attorney, Drummond Woodsum  
Portland, Maine**

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.



Senator Rafferty, Representative Murphy and other members of the Education and Cultural Affairs Committee,

My name is Michelle Brann and I work at Spruce Mountain High School in Jay. I am a Social Studies teacher at SMHS, and I serve as RSU 73's Education Association President. I am submitting written testimony in support of LD 1097, HP0719 - An Act to Provide De-escalation and Behavior Intervention Training for School Personnel, LD 1248, HP0823 - An Act Regarding Physical Escort and Restraint and Seclusion of Students in Schools, and LD 1398, HP0920 - An Act Regarding Behavioral Health Support for Students in Public Schools.

In the Spring of 2024, based on member feedback, we surveyed staff at our district's Primary and Elementary Schools to better understand how student behaviors have been impacting student learning and teachers' working conditions. This survey was sent to those who are on a teacher contract or any ed tech 3 working in an instructional role where they are completely responsible for the children (i.e. Library, Healthy Living, the Behavior RTI room, and Computer class), and a total of 53 out of 66 teachers and education technicians responded. When asked, "How would you rate your level of concern for behaviors in your school?" 69.2% of Primary School respondents answered that behaviors are a huge problem, while 81.5% of Elementary School respondents answered they are a huge problem. Not a single respondent in either building believed the behaviors were not a problem. For the question, "Please be honest, have you ever thought about leaving this district due to student behaviors and other needs that negatively impact your teaching?" 61.5% of Primary School and 70.4% of Elementary School respondents answered, "yes." Another survey question asked, "Do you feel like you can effectively teach what needs to be taught with the current level of behaviors in your setting?" 96% of Primary School and 88.9% of Elementary School respondents answered, "only sometimes or no."

I have family members and friends that work in many other school districts around the state, and I hear similar worries from them. Educators are deeply concerned about the academic and emotional needs of our students, and without significant changes, these struggles are only going to increase in frequency and severity. When layered upon the deepening educator shortage, we are facing a crisis in our public schools. These three bills would be important steps towards helping make sure our students and staff members have the resources, skills, knowledge, and supports necessary to ensure success for our students.

Thank you for your time and consideration,

Michelle Brann  
SMHS Social Studies Teacher  
RSU 73 Education Association President  
Resident of Winthrop, Maine