

LD 1373: Questions and Answers

Prepared for members of the Education Committee for the work session on LD 1373, by Disability Rights Maine, the Autism Society of Maine, and the Maine Developmental Disabilities Council, in consultation with the Maine Coalition Against Restraint and Seclusion. Please direct any questions to Atlee Reilly, Disability Rights Maine (areilly@drme.org), who will be available at the work session.

<p>Why do we need to limit the use of restraint and seclusion?</p>	<p>Seclusion and restraint are harmful and ineffective.ⁱ</p> <p>Maine Attorney General Aaron Frey signed a letter in support of national Keeping All Students Safe legislation, which states, “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.”ⁱⁱ</p>
<p>Why do we need LD 1373 when we have Chapter 33 regulations governing restraint and seclusion?</p>	<p>Almost 10 years ago, Maine implemented Chapter 33,ⁱⁱⁱ which regulates the use of seclusion and restraint in schools. The collective hope was that this would lead to a reduction in the use of these emergency interventions. But that has not been the case.</p> <p>Generally, restraint and seclusion numbers have been increasing. And just last school year, even though it was shortened by the pandemic, there were 17,262 reported uses of restraint, the highest annual number reported to date.^{iv}</p> <p>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.^v</p>
<p>At the public hearing, there were questions raised about the accuracy of Maine’s data and the comparisons to other states. What does the data tell us?</p>	<p>The comparisons made to other states are based on reporting to the federal government based on a standard set of definitions that applies to all states.^{vi}</p> <p>The aggregate numbers of restraint and seclusion are based on numbers reported to MDOE in accordance with Chapter 33.^{vii}</p> <p>And although this data is likely unreliable, unfortunately it is unreliable in a certain direction – with all indicators pointing to underreporting of emergency interventions.^{viii}</p>
<p>Would LD 1373 ban all uses of physical restraint?</p>	<p>No. LD 1373 only bans inherently dangerous restraints, including:</p> <ul style="list-style-type: none"> a) Physical restraint that is life-threatening, restricts breathing or restricts blood flow to the brain, including prone and supine restraint;^{ix}

	<ul style="list-style-type: none"> b) Physical restraint that interferes with a student’s ability to communicate in their primary mode of communication; and c) Physical restraint that is contraindicated based on the student’s disability or medical or psychiatric condition. <p>In addition, LD 1373 would put existing bans on mechanical and chemical restraint in statute.</p>
<p>When would restraint be permitted under LD 1373? How is this different from under Chapter 33?</p>	<p>LD 1373 would permit restraint when a student’s behavior “poses an imminent danger of serious physical injury to the student or others”. Chapter 33 currently permits restraint when the behavior of a student “presents a risk of injury or harm to the student or others.”</p> <p>For both LD 1373 and Chapter 33, restraint is only permitted after less restrictive interventions have been ineffective</p>
<p>Does LD 1373 require any physical contact with students to be recorded as a restraint?</p>	<p>No. LD 1373 states that the following physical interventions are NOT restraint:</p> <ul style="list-style-type: none"> a) Physical escort (temporary touching or holding of the hand, wrist, arm, shoulder or back to induce a student to walk to a safe location) b) Physical prompt (physical contact that enables a student to learn an identified skill) <p>In addition, the use of safety restraints in a vehicle and adaptive devices are not restraints under LD 1373.</p>
<p>Why does LD 1373 ban seclusion?</p>	<p>Seclusion is a dangerous and damaging practice that is often used inappropriately.^x It is akin to solitary confinement, isolating and confining an individual.</p> <p>Seclusion is already prohibited in residential treatment settings in Maine.^{xi} And growing number of states have acted to eliminate the use of seclusion in schools.^{xii}</p>
<p>Would LD 1373 prevent schools from using time out or students from going to a room to cool down?</p>	<p>No. Nothing in LD 1373 would prevent schools from using a time out to give students access to a space to calm down.</p> <p>Time out is currently defined in Chapter 33 as “an intervention where a student requests, or complies with an adult request for, a break”.</p>

<p>How are the reporting requirements under LD 1373 different than existing requirements under Chapter 33?</p>	<p>LD 1373 would ensure that all schools in Maine comply with requirements to report the use of restraint and seclusion. Currently, some schools claim that Chapter 33 does not apply to them. LD 1373 would close that loophole.</p> <p>Chapter 33 already requires schools to make annual reports of the annual uses of restraint. The only additional reporting requirement in LD 1373 is the requirement that covered entities report the number of students with disabilities who are subjected to restraint. This is already required for federal reporting.</p>
<p>What will happen to the Chapter 33 requirements if LD 1373 is enacted?</p>	<p>LD 1373 would govern in the areas where it provides greater protections than Chapter 33. But the rest of Chapter 33, including incident reporting requirements and debriefing requirements following the use of restraint, would remain in effect.^{xiii}</p>
<p>MDOE indicated that they might need additional resources to support schools in implementing LD 1373, why is that?</p>	<p>LD 1373 directs MDOE to continue providing technical assistance utilizing existing resources. Chapter 33 already requires schools to use MDOE approved training programs that emphasize the “use of non-physical interventions for responding to potentially dangerous behaviors, including de-escalation and the use of positive alternatives”.</p> <p>Two years ago, in testimony regarding a similar bill, MDOE told the Education Committee: “The Department is organizing focused efforts to support schools with professional development that will promote preventative strategies through classroom management as well as implementation of social/emotional and trauma-informed practices that are calculated to reduce extremely disruptive, aggressive, or self-injurious behavior among children and youth.”^{xiv} MDOE could satisfy the requirements in LD 1373 by continuing these focused efforts.</p> <p>If MDOE needs additional resources, it has nothing to do with LD 1373.</p>

ⁱ USDOE, Restraint and Seclusion: Resource Document (May 2012), available at: <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf> (“As many reports have documented, the use of restraint and seclusion can have very serious consequences, including, most tragically, death. Furthermore, there continues to be no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques.”)

ⁱⁱ 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>

ⁱⁱⁱ 05-071 C.M.R. Ch. 33 (“Chapter 33”)

^{iv} Data pulled from the 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)

^v 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>

^{vi} All schools receiving federal funds are required to report the uses of restraint and seclusion pursuant to the OCR Civil Rights Data Collection. And there are definitions for seclusion and restraint used by all states for these purposes, which can be found here: <https://crdc.grads360.org/services/PDCService.svc/GetPDCDocumentFile?fileId=37034>

^{vii} See: MDOE, “Restraint and Seclusion” webpage, *available at* <https://www.maine.gov/doe/schools/safeschools/restraint>

^{viii} See: 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> (See pages 9-11: “Based on DRM’s analysis, the data reported to MDOE does not accurately reflect the number of emergency interventions being used in educational programs across the state. There is clear evidence of underreporting.”); 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> . See also: GAO-20-345, *Education Needs to Address Significant Quality Issues with its Restraint and Seclusion Data* available at: <https://www.gao.gov/assets/gao-20-345.pdf> (“When we tested the nation’s 30 largest school districts (those with more than 100,000 students), we found patterns that may suggest underreporting in at least 13 of them, in addition to the 10 that reported zeros for the 2015-16 school year.”),

^{ix} For information about the dangers of restraint, including prone and supine restraint, see: Equip for Equality, “NATIONAL REVIEW OF RESTRAINT RELATED DEATHS OF CHILDREN AND ADULTS WITH DISABILITIES: The Lethal Consequences of Restraint” (2011) available at: <https://www.equipforequality.org/wp-content/uploads/2014/04/National-Review-of-Restraint-Related-Deaths-of-Adults-and-Children-with-Disabilities-The-Lethal-Consequences-of-Restraint.pdf> (“Of the 69 dangerous practices identified, 54% involved a person lying facedown in a prone position, which is associated with increased risk of asphyxia and aspiration; 51% involved a person lying face-up in the supine position without the person’s head being elevated, which is associated with increased risk of asphyxia, fatal cardiac arrhythmia or respiratory arrest and 44% involved staff exerting pressure to the person’s neck or torso, creating a high risk of fatality.”) See also: *SECLUSIONS AND RESTRAINTS, Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers* (2009)

(testimony of United States Government Accountability Office Before the Committee on Education and Labor, House of Representatives), *available at*: <https://www.gao.gov/products/gao-09-719t>

^x *See*: ProPublica Illinois, “The Quiet Rooms” (November 19, 2019) available at: <https://features.propublica.org/illinois-seclusion-rooms/school-students-put-in-isolated-timeouts/>; *See also*: Majority Committee Staff, U.S. Senate HELP Committee, “Dangerous Use of Seclusion and Restraints in Schools Remains Widespread and Difficult to Remedy: A Review of Ten Cases” (Feb. 12, 2014), *available at* <http://www.help.senate.gov/imo/media/doc/Seclusion%20and%20Restraints%20Final%20Report.pdf>

^{xi} 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”)

^{xii} These states include: Georgia, Hawaii, Nevada, Pennsylvania, and Texas. *See*: 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.”). 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>

^{xiii} MDOE would need to use the rulemaking process to ensure that Chapter 33 was aligned with these statutory changes.

^{xiv} MDOE Testimony regarding LD 1376 (May 13, 2019)(emphasis added), *available at*: <http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=125651>