

May 4, 2021

Chairman Rafferty, Chairman Brennan, Distinguished Members of the Joint Standing Committee on Education and Cultural Affairs:

My name is Alan Cobo-Lewis. I live in Orono. I am testifying **FOR LD 1373**, “An Act To Keep All Maine Students Safe by Restricting the Use of Seclusion and Restraint in Schools”.

I’d like to share with the Committee some data and some history.

1 Data

1.1 Nationally and in Maine, most districts have few if any restraints and seclusions—but a few districts have a lot (and Maine as a state as a lot)

In 2009 the Government Accountability Office (GAO) reviewed hundreds of injuries and deaths resulting from restraint and seclusion in schools and also reviewed allegations of such nationwide.¹ The report found that almost all allegations pertained to children with disabilities and found that restraint and seclusion were frequently used when children were not physically aggressive.

A 2017 analysis of nationwide data revealed that the overwhelming majority of school districts reported zero or near-zero rates of restraint and seclusion—but that in a small proportion of school districts restraint and seclusion are relatively common.² ***This suggests that best practice in schools that do not rely on these practices could—and probably should—be encouraged or required to spread to schools that do rely on these practices.*** More generally, the evidence for effectiveness of restraint and seclusion is weak, and training and technical assistance can promote ***evidence-based practices*** such as Positive Behavioral Interventions and Support (PBIS) function-based interventions to address severe behavior problem (potentially including *functional analysis*, which systematically manipulates the environment, versus the *functional behavior assessment*, which is a correlational technique found in Maine Unified Special Education Regulation). See, for example, literature reviewed by Walker and Pinkelman.³

According to a recent analysis of national data, ***Maine has the 4th-highest percentage of schools reporting at least one restraint or seclusion incident overall and the 4th-highest percentage of schools reporting at least one restraint or seclusion of a child with a disability.***⁴

Nationally, the variability among school districts in rate of restraint and seclusion is unlikely to be explained by districts with high rates of restraint and seclusion disproportionately serving students viewed as especially challenging. Districts with student bodies high in poverty and high in minority status

¹ Kutz GD (2009, May 19). Seclusions and restraints: Selected cases of death and abuse at public and private schools and treatment centers. *Testimony before the Committee on Education and Labor, House of Representatives*. Washington, DC: US Government Accountability Office. <https://www.gao.gov/products/gao-09-719t>

² Gagnon DJ, Mattingly MJ, Connelly VJ (2017). The restraint and seclusion of students with a disability: Examining trends in U.S. school district and their policy implications. *Journal of Disability Policy Studies*, 28(2), 66-76. <https://doi.org/10.1177/1044207317710697>

³ Walker VL, Pinkelman SE (2018). Minimizing restraint and seclusion in schools: A Response to Beaudoin and Moore. *Intellectual and Developmental Disabilities*, 56(3), 165-170. <https://doi.org/10.1352/1934-9556-56.3.165>

⁴ Gage NA, Pico DL, Evanovich L (2020). National trends and school-level predictors of restraint and seclusion for students with disabilities. *Exceptionality*, <https://doi.org/10.1080/09362835.2020.1727327>

actually report restraining and secluding at lower rates, though Black and Latin students attending relatively affluent and low-minority schools are restrained at a highly disproportionate rate.²

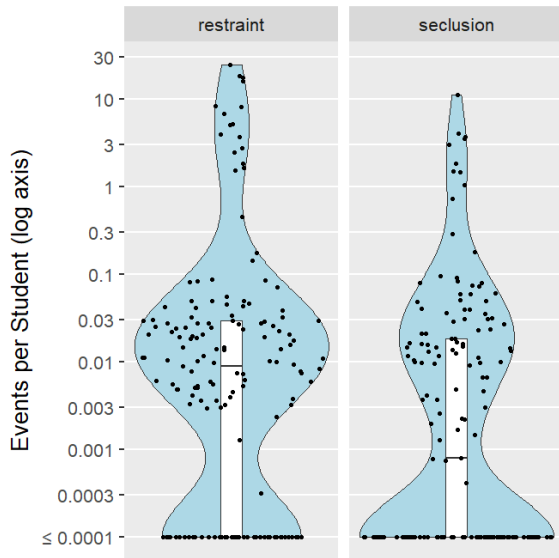


Figure 1. Distributions of restraints per student and seclusions per student for 2019 reporting year. Only plotting reporting entities with at least 5 restraints, at least 5 seclusions, or student enrollment of at least 100. Zero events shown as “ ≤ 0.0001 ”. Source: Maine Department of Education⁵

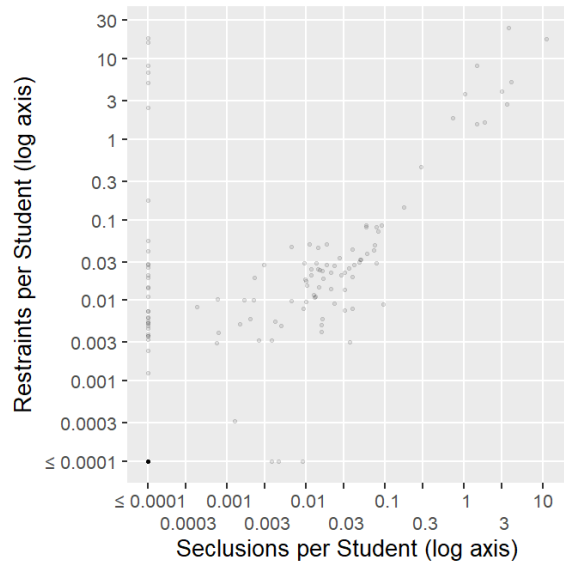


Figure 2. Scatterplot of restraints per student vs seclusions per student for 2019 reporting year. Plotting same reporting entities as in Figure 1. Zero events shown as “ ≤ 0.0001 ”. Data points are semi-transparent, so darker regions indicate multiple data points. 30% of reporting entities in the figure reported zero restraints and zero seclusions (fully opaque dot in lower left corner of scatterplot). Source: Maine Department of Education.⁵

Figure 1 plots 2019 restraint and seclusion data from Maine⁶. Note the large number of reporting entities with zero restraints and/or zero seclusions (all the data points at the “ ≤ 0.0001 ” floor). The median number of restraints per enrolled student is below 1 per 100 (with 30% of reporting entities in the figure at zero), and the median number of seclusions per enrolled student is below 1 per 1000 (with 48% of reporting entities in the future at zero). But some settings have much higher rates. Most of the high outliers (0.1 or more events per student) are special-purpose schools. But there are some school districts with rates of restraint or seclusion comparable to those found in the special-purpose schools. ***Those districts could be candidates for training and technical assistance in order to ensure students are being served without unnecessary restraint or seclusion.***

⁵ <https://www.maine.gov/doe/sites/maine.gov.doe/files/inline-files/Restraint%20%26%20Seclusion%20Data%202020.xlsx>

⁶ 2019 data were analyzed because of a few obvious data anomalies in 2020 and concern about whether 2020 data were therefore representative, especially in light of the pandemic. However, overall results were similar for 2020 dataset.

Elimination of seclusion is unlikely to result in increased use of restraint, as there is ***no evidence in the data of a tradeoff between seclusion and restraint*** (see Figure 2—rate of restraint and rate of seclusion tends to vary together instead of trading off against one another).

1.2 Moving Chapter 33 rules into statute would ensure the regulations apply to special purpose schools, which as a group are overwhelmingly high in restraint and seclusion use

LD 1373 would move existing rule from major substantive rule Chapter 33 into statute. The rationale is that, while Chapter 33 includes significant regulation of restraint and seclusion, the Office of the Attorney General has indicated that special purpose schools are not subject to this rule. Data in Maine indicate restraint and seclusion are overwhelmingly disproportionately used in these settings, which is consistent with a recent national analysis reporting very high rates of restraint in special purpose programs⁴.

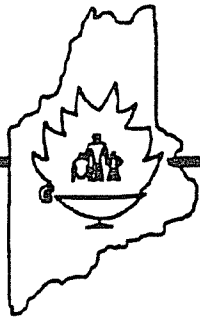
2 History

Bills like LD 1373 typically generate feedback from school districts and school administrators and the organizations representing them. With that in mind, consider the following history:

In 1997 it was legal in Maine for school districts to place children in “time out boxes”. These boxes were frequently no bigger than a closet. They could even be cardboard boxes, broom closets, or plywood boxes. In response to harrowing stories from constituents about students being confined in a 3.5 by 5.5 foot locked box, a bipartisan group of legislators (Plowman, Cathcart, *et al.*) introduced in the 118th Legislature LD 1542 “An Act to Eliminate the Use of Time-out Boxes”. The testimony regarding that bill, available at [this link](#), could set your hair on fire. Yet the bill was opposed by what was then called the Maine Association of Directors of Services for Children with Exceptionalities (MADSEC). I have attached that testimony to my own, but I would summarize it by saying that MADSEC opposed the abuse of students but nevertheless opposed the bill that would “ban the box”, with justification based on student and staff safety. This Committee nevertheless unanimously reported out a bill to develop standards that have since been refined further, and MADSEC ultimately worked with other stakeholders on further refinement of restraint and seclusion rules. This Committee has the opportunity to be on the right side of history again.

Respectfully,

Alan Cobo-Lewis, Ph.D.



MADSEC

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Wayne L. Newland, Ed.D., Executive Director

Penelope A. Morrell, Adm. Asst./Office Mgr.

TO: Joint Standing Committee on Education and Cultural Affairs

FROM: Monica Strobel, Vice President & Co-Chair, Legislative Committee
Hanneke McQuoid, Co-Chair, Legislative Committee
Wayne Newland, Executive Director

DATE: April 30, 1997

RE: L.D. 1542 "An Act to Eliminate the Use of Time-out Boxes."

MADSEC is opposed.

We do not support the use of aversive consequences, and we do not tolerate abuse of students.
We want children to remain in school.

However, some children need to be removed from the immediate area to ensure the safety of students and staff. The use of various positive, appropriate behavioral techniques should be described in the child's Individualized Education Program (IEP).

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