

Testimony Submitted by:

Association for Maine Behavior Analysis

president@mainebehavioranalysis.org.

Executive Summary

The Association for Maine Behavior Analysis urges the Committee on Education and Cultural Affairs not to recommend passage of HP 1007/LD 1373, “An Act To Keep All Maine Students Safe by Restricting the Use of Seclusion and Restraint in Schools” without significant amendment.

We do not condone the use of restraint in response to minor disruptive behaviors, and we agree that most challenging behavior can be reduced or eliminated with positive behavioral approaches when they are designed and implemented by qualified professionals. However, even highly effective positive intervention plans may require days or weeks to eliminate dangerous behavior. Without access to the interventions prohibited by the unamended bill, educational placements for the most severely affected students may be reduced. Additionally, once schools develop a hands-off policy, often staff are no longer trained in safe procedures to manage crises. So untrained staff engage in unsafe restraints that go unmonitored.

Rep. Millett’s proposed amendment is a step in the right direction; however, we have additional concerns. First, we urge careful review of any data being used to drive this proposed legislation, to ensure that appropriate comparisons and statistical methods have been used. Second, the definitions of seclusion and restraint in the bill are vague and open to such wide interpretation that unintended consequences are nearly inevitable. Meaningful reporting and performance management cannot be done without more precise definitions and tracking of trends for individual students. Third, use of restraint and seclusion in the case of imminent harm should be lawful and include provisions for the team to plan in advance how emergencies should be handled. Finally, technical assistance to ensure that students have access to effective positive intervention plans will likely require more than currently available resources.

Full Comments

We are writing with regard to HP 1007/LD 1373, “An Act To Keep All Maine Students Safe by Restricting the Use of Seclusion and Restraint in Schools.”

The Association for Maine Behavior Analysis (AMeBA) is a membership organization of professional Board Certified Behavior Analysts (BCBAs®) practicing Applied Behavior Analysis (ABA) in the state of Maine. ABA is an applied science used to create socially significant behavior change through evidence-based assessment and procedures.

BCBAs are masters or doctoral level clinicians who have completed a course sequence in these assessments and procedures, as well as substantial supervised fieldwork, and must pass a qualifying exam for certification. BCBAs are overseen by an international board, the Behavior Analysis Certification Board, and practice within a clearly outlined code of ethics.

As Board Certified Behavior Analysts we are acutely aware of the necessity of strict controls, adequate resources, and evidence-based practices implemented with ethical integrity to ensure that students receive the least restrictive, effective treatment for behavioral challenges. We agree that most challenging behavior can be reduced or eliminated with positive behavioral approaches when they are designed and implemented by qualified professionals.

As an organization, we are deeply concerned by reports of widespread use of restrictive procedures in Maine. It's imperative that public policy be based on data that is valid and reliable. Some reported measures may be mixing apples and oranges, without consistent definitions or statistical methods. We urge careful review of any data being used to drive this legislation.

We do not condone the use of restraint in response to minor aggression, disrespect, running away, non-compliance and many other disruptive behaviors that sometimes lead to hands-on approaches by frustrated teachers and staff. Teachers and staff who resort to physical intervention do so when they don't have the resources or expertise to implement less restrictive and effective approaches.

At the same time, most of us have worked with students who exhibit behaviors that can and have caused significant bodily harm to themselves and others, including permanent disability and death. We are concerned that this bill may have unintended consequences for the rare student for whom the least restrictive, effective treatment actually requires physical restraint or seclusion.

The direct physical risk posed by students who engage in dangerous self-injury, wield objects as weapons, or become aggressive with damaging force, must be addressed safely. Even a highly effective positive intervention plan may require days or weeks to fully eliminate these behaviors. Until the rate of behavior is zero, a plan for physical intervention or seclusion may be needed for the safety of all.

Students who harm themselves or others are at high risk of being excluded from their regular classroom or even their local school. Without access to the interventions prohibited by the unamended bill, the educational placements for the most severely affected students may be reduced to few or none. Schools will not take the risk of accepting these students, knowing that they will be unable to protect them or those around them.

Additionally, once schools develop a hands-off policy, often staff are no longer trained in safe procedures to manage crises that are not responding to de-escalation. Staff also become afraid to report incidents where they placed their hands on a student. So untrained staff engage in unsafe restraints that go unmonitored.

Teachers and staff unable to intervene may be more likely to call the police, resulting in volatile encounters that the police are rarely trained to resolve without force.

We urge the committee not to recommend passage of this bill without significant amendment. As written, the bill would place students and those around them at significant risk of harm. We outline our

specific concerns with the bill language below, as well as respond to Rep. Millett's proposed amendment.

Section 1.

The definitions of seclusion and restraint are vague and open to such wide interpretation that unintended consequences are nearly inevitable. For example, the definition of seclusion includes any "clearly defined area from which the student does not feel free to go" and could be construed to include almost anywhere a student is trying to calm out of reach of other students.

Rep. Millett's change to the definition of mechanical restraint is helpful. Without the amended language, the definition would include a variety of safety features such as wheelchair safety belts and specialized seatbelts on buses that protect students from falling out of their seats.

With regard to physical restraints, not all forms of supine restraints are life threatening or restrict the airway or blood flow, and they may be the only safe option if a student puts themselves on the floor while continuing to injure themselves.

It would also be helpful to list what sorts of restraints would be lawful: blocks, releases, standing/seated holds, and involuntary physical escorts do not meet the definition of unlawful restraint.

Section 2

The definitions of unlawful restraint and seclusion make no exception for emergency situations. Teachers and staff need to understand what the limits of these definitions are. Rightly, Rep. Millett's amendment makes this exception explicit, but only for restraint. We would also like to see further clarification that written plans for emergency procedures are not only acceptable, but best practice. Dangerous behaviors are emergencies, and staff should be trained to use the most appropriate response for the specific student.

Section 3

Meaningful reporting cannot be done without better definitions as noted above. Additionally, injuries related to challenging behavior when no restraints are used should also be tracked. This ensures that the focus is on preventing injury, whether restraint is used or not. It would also document whether or not injuries are rising or falling when restraints are eliminated. Furthermore, reporting alone is not sufficient oversight. Additional amendment to this section is needed. As noted in a position paper from the Association of Behavior Analysis International (attached):

These procedures should be implemented only by staff who are fully trained in their use, receive regular inservice training, demonstrate competency using objective measures of performance, and are closely supervised by a Board Certified Behavior Analyst or a similarly trained professional. The use of restraint or seclusion should be monitored on a continuous basis using reliable and valid data collection that permits objective evaluation of its effects. Procedures that involve restraint or seclusion should be continued only if they are demonstrated to be safe and effective...

Section 4

Performance improvement should be addressed, rather than stricken as shown in Rep. Millett's amendment. Improvement should focus on reduced rates, or restrictiveness of restraints, for individual students over time. For example, covered entities could report on the percent of restrained students who showed a downward trend in restraints during the year. This type of measure would show whether

covered entities are making progress, even if they are serving increasing numbers of students who are coming to them with dangerous behaviors. Additionally, the “average” comparison for each school or program should be made to other similar programs. If a private school specializes in the treatment and education of children with severe behavioral challenges, a comparison to regular public school data would be misleading.

Section 6

We applaud the inclusion of technical assistance to implement evidence-based interventions that reduce the likelihood of restraint. This assistance is the key to helping students in the least restrictive, effective and safe manner. There is a rich scientific literature on these interventions and specifically on methods to reduce the use of restraint.

This section on technical assistance, if implemented at the needed level and intensity with qualified professionals who are trained and licensed/certified in evidence-based interventions, will be a significant cost to the state of Maine. We are concerned that Rep. Millett’s amendment to accomplish this technical assistance within existing resources would make it unlikely that sufficient technical assistance would be available. This is an area that would benefit from additional analysis.

AMeBA is available to provide additional input at a legislative work session. We believe that the public is best served by the contribution of a range of voices, including those students and their families who have experienced restraint and seclusion, as well as the professionals and researchers who have studied these procedures, and those who have been called upon to serve our most troubled students every day. *We are all seeking to prevent untrained staff from engaging in unsafe restraints that go unmonitored.*

Thank you for the opportunity to provide this comment. We can be reached via phone or email at president@mainebehavioranalysis.org.