Maine Behavioral Healthcare
MaineHealth

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Senator Rafferty, Representative Brennan, and distinguished members of the Joint Standing Committee on Education and Cultural Affairs, I am Dr. Matthew Siegel, Vice President of Medical Affairs for the Developmental Disorders Service Line of Maine Behavioral Healthcare, which is a member of MaineHealth, and have over 15 years of experience in treating, researching and publishing on school-based treatment of children with autism and other developmental disabilities who engage in serious challenging behaviors. Most recently, I chaired a national summit on challenging behavior for Autism Speaks, which included careful consideration of the use of restraint and seclusion.

I am addressing LD 1373, as amended, as it applies to youth with autism and other developmental disabilities, who have been placed in special purpose private schools exactly because they have serious and often dangerous challenging behaviors, and require an intensive school-based treatment program to be able to access their education.

I would like to be clear about the population I am speaking about: these are children who, without intervention, may seek to slam their head into a metal doorframe, gouge their own eyes until they bleed, pull a teacher's hair until there is a scalp separation, and other highly dangerous behaviors. This is why they have been referred to special purpose school programs where we very planfully attempt to safely manage and reduce these behaviors so that the child can access their education.

We operate 3 distinct school-based treatment programs and it is the specific goal and policy of our organization to only utilize restraint or seclusion as a last resort, after other interventions have been utilized, and it is the only way to attempt to prevent imminent risk of harm to the child or others. However, Maine Behavioral Healthcare is very concerned that the proposed bill, as amended, will make the risk of harm to a child engaging in aggression or self-injury greater, not lower.

The bill is duplicative of the existing Department of Education Chapter 33 rule governing use of restraint and seclusion in schools. That rule was developed through a lengthy stakeholder process and already carefully defines restraint and seclusion, identifies the very limited circumstances under which they may be used, specifies stringent monitoring and notification requirements, and requires more extensive annual aggregate reporting than this proposed bill. Without the careful considerations represented in Chapter 33, this bill creates confusion and increases risk by excluding certain things and including others.

The primary difference and problem with this bill versus Chapter 33, is the elimination of the option of using seclusion to safely manage dangerous behavior that puts a child or others at imminent risk. While, as previously stated, no one wants to utilize seclusion (or restraint), and it is an option of last resort, there are instances where seclusion is safer than utilizing the physical restraint approaches allowed by this bill. Some youth are very difficult to safely physically restrain due to their size or strength, and some youth do not deescalate in appropriately applied physical restraint as they find the tactile contact and proximity of staff implementing the restraint to be agitating. In these instances, it can be significantly safer for

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the child and staff to utilize seclusion, where the child is able to be separated from staff and have a chance to deescalate without placing others at risk. A brief seclusion can sometimes obviate what could become a lengthy and potentially unsafe physical restraint. In sum, this bill's removal of this option will increase the risks to children and staff in some situations.

Other problems generated by this bill, which were carefully handled in Chapter 33, are:

- The bill may block access to medically necessary protective devices and put children at greater risk because it does not include the use of protective equipment for children, such as helmets, as interventions excluded from the definition of physical restraint.
- The bill allows the determination of whether an allowed physical restraint is contraindicated for a particular child to be based on non-medical documents and non-medical personnel. It allows a restraint to be considered contraindicated based on the IEP/IFSP, the behavior intervention plan or "another relevant record made available…" It is inappropriate for non-medical personnel to make decisions on medical contraindications to restraint or seclusion.
- The bill defines the allowable use of restraint to be based on imminent "danger". A more standard and precise term, which is utilized in the federal Centers for Medicare and Medicaid services rule on seclusion and restraint, is imminent "risk".
- The bill makes it illegal to utilize a physical restraint if it interferes with a child's ability to communicate. This is an unworkable requirement, as this means all forms of physical restraint would be unlawful for children who are minimally verbal and use devices and other external systems to communicate.
- The bill lacks the definition of "time out" contained in Chapter 33, and thus potentially includes simple time outs as a disallowed form of seclusion.

In summary, this bill, while well intentioned, is unnecessary, duplicative, and actually increases the risk of harm to children and staff in school settings. It will lead to the frequent calling of law enforcement into schools to attempt to manage these situations, which places children at great risk, as law enforcement is not clinically trained to manage behavioral challenges in children with developmental disabilities. Ultimately the end result will be the restriction of access to education for this population, as even special purpose schools will not accept children with significant behaviors if the school does not have appropriate tools available to them for safely managing these behaviors. I urge the Committee to vote Ought Not to Pass on this bill and instead rely on the existing, carefully developed Chapter 33 rule of the Department of Education, which includes the philosophical, operational, and reporting elements sought by this bill.

I am happy to answer any questions committee members may have.

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