

Michigan Association of Administrators of Special Education

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MAASE Official Position Statement (3.22.10)

S. 2860: “Preventing Harmful Restraint and Seclusion in Schools Act”

This statement is submitted on behalf of the Michigan Association of Administrators of Special Education (MAASE), a professional organization of over 600 administrators serving local and intermediate school districts who are responsible for coordinating the delivery of special education programs/services to students throughout the state of Michigan.

MAASE has been attentive to the issue of seclusion/restraint over time. A number of our members participated on a Michigan Department of Education seclusion and restraint referent group. We have reviewed S. 2860 as introduced, as well as H.R. 4247, the House version of the bill, now titled “Keeping All Students Safe Act,” and previously reviewed and commented on the GAO report, *Seclusion and Restraints, Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*. We provide the following comments on S. 2860, “Preventing Harmful Restraint and Seclusion in Schools Act” for your consideration.

1. MAASE supports retention of the preamble and short title of the Senate bill. The preamble and short title of the Senate bill more accurately reflect the intent and scope of the bill than the preamble and short title of the bill passed by the House.
2. MAASE supports a federal ban on physical restraint and seclusion in schools imposed solely for purpose of discipline or convenience. A federal ban on inappropriate restraint and seclusion is a laudable goal that would protect the interests of all students. That being said, school officials must still be allowed to use reasonable measures to maintain the safety of staff and students in emergency situations.
3. MAASE agrees that any use of physical restraint and seclusion must be viewed as a method of last resort and undertaken only by trained personnel. We believe personnel training and good parent communication are necessary in every use of restraint and seclusion. Michigan has been active in addressing restraint and seclusion in its public schools since 2004. We believe Michigan, with its focus on Positive Behavior Supports, may be used as a model to assist other states in the implementation of a systematic approach that ensures Positive Behavior Supports and ensures “that seclusion and restraint are used only as a last resort method.”¹
4. MAASE believes that the States are the appropriate venue for developing restraint and seclusion policy, procedures and guidance for schools. We recommend that each State create standards for seclusion and restraint. Michigan developed its comprehensive standards after convening a referent group in May 2004 that included parents, advocates, educators, policy makers, and service providers. The work of the referent group was followed by the adoption of Michigan State Board of Education’s Positive Behavior Support policy (September 12, 2006), and the development and adoption of *Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint*. (December 12, 2006). Web link: http://www.michigan.gov/documents/mde/Seclusion_and_Restraint_Standards_180715_7.pdf

The Michigan Department of Education has been instrumental in assisting school districts with understanding and implementation of these policies and standards. We support the use of these tools within every school in Michigan, and we hold up Michigan's model as an example for other states to follow. State policy documents should include policies and practices regarding: School-wide System of Behavior Support, Positive Behavior Support, Staff Training, Emergency Intervention Plans, Seclusion and Restraint.

¹ *Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint*. (December 12, 2006). Michigan Department of Education.

5. MAASE believes schools must support learning for all students in a safe environment. To that end, we caution the reporting of data (Section 6 (b)(1), Reporting Requirements) that has the potential for misinterpretation and sensationalism due to the nature and complexity of each situation. Our organization is interested in a full review of data that also illuminates successful uses of restraint or seclusion, particularly those that allowed a student to regain the capacity to continue attending school and learning throughout the school day or that averted danger or injury. Proposed Action: Revise Section 6 (b) (1) lines 18 - 21 to read: “prepare and submit to the Secretary a report with respect to each local education agency...” Strike, “and make available to the public.”
6. MAASE agrees that seclusion is not time out. We appreciate the clarification in Section 5 (b) Rule of Construction, “Nothing in this section shall be construed to authorize the Secretary to promulgate regulations prohibiting the use of (1) time out; etc.” It is important that school personnel have the authority to develop treatment plans for the purpose of helping a student to become calm.
7. MAASE does not agree with the proposed legislation’s prohibition against written plans for individual students that may include physical restraint or seclusion (Section 5(a)(5) lines 5 - 10). Schools are responsible for implementing the Individuals with Disabilities Education Act (20 U.S.C. 1401). IDEA requires school districts to provide a free appropriate public education (FAPE) in the least restrictive environment (LRE) to eligible students with disabilities. In developing FAPE, IDEA requires IEP Teams to consider various special needs, including, when the behavior of the child interferes with the learning of self or others, “the use of positive behavioral interventions and supports, **and other strategies**, to address that behavior” (§ 300.324 (a)(2)(i)). There is a significant body of case law that has evolved over the years that clearly recognizes the role of individual functional behavior assessments and individually tailored behavior supports and interventions in fulfilling IDEA’s requirement to provide FAPE in the least restrictive environment. If the current S. 2860 language is enacted that bars individual plans with restraint or seclusion provisions but allows school or district plans, S. 2860 will be on a collision course with the individual planning requirements of IDEA. The language in section 5(a)(5) is also inconsistent with section 11, which provides that the Act is not to be construed to restrict or limit other rights or remedies available to students and their families under another Federal or State law. There are only two ways to solve this untenable situation: either delete S. 2860’s absolute bar to the inclusion of restraint or seclusion in individual plans for students with IEPs, or amend IDEA to state that the development of individual plans to provide FAPE (including IEPs or behavior plans referred to but not contained in the IEP) may never contain restraint or seclusion.
8. MAASE agrees that the use of physical restraint and seclusion is a last resort method undertaken only in the case of behavior that is dangerous to the student or others. Michigan provides guidance (developed and supported by parents, advocates, educators and others) to its schools including the development of Emergency Intervention Plans.² These Emergency Intervention Plans are written only when a pattern of behavior that requires emergency restraint or seclusion emerges or is anticipated and is necessary in addition to positive behavior supports in order to protect the health, safety and dignity of the student. In the infrequent situations where an Emergency Intervention Plan is developed, it is separate from the student’s Positive Behavior Support Plan, to be used only in a crisis situation, is based on an individualized functional behavioral assessment for that particular student and is developed in partnership with the parent by a team that includes a person knowledgeable about restraint or seclusion. (See further discussion in paragraph 7, below). Proposed Action: Strike present language and revise Section 5(a)(5) lines 5 - 10 to read: “Should a pattern of behavior that requires the use of emergency restraint or seclusion emerge or be anticipated, an individualized emergency intervention plan may be developed in addition to the student’s positive behavior support plan to protect the health, safety, and dignity of the student. The individualized emergency intervention plan must be developed in partnership with the parent by a team that includes a person knowledgeable about restraint or seclusion. In the absence of a mutually agreed upon individualized emergency intervention plan, local education agencies or schools will comply with policies and procedures for use of physical restraint or seclusion contained in school safety or crisis plans, provided that such school plans are not specific to any individual student.”
9. In addition to the direct conflict with the IDEA, MAASE does not agree with the reactive versus proactive nature of this (Section 5(a)(5) lines 5 - 10) prohibition. School personnel work with students with significantly challenging and dangerous behaviors. We believe we would be derelict in our duty to protect all students if we did not use our knowledge of individual students’ behavioral challenges to create written plans that support and protect all students, including individual students during the midst of a situation that may require the use of physical restraint or seclusion. To respond only in the moment does not allow for the careful and thoughtful manner in which dangerous situations must be handled. Specifically, some students with disabilities present such unique and potentially dangerous behavioral challenges that a general school wide policy or procedure would not support the unique danger (for example, running after moving vehicles,

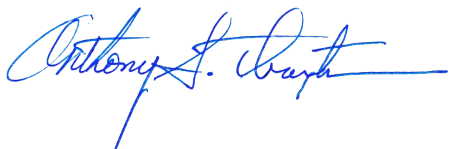
attempting to drive vehicles due to a unique fascination, grabbing at and pulling on long hair simply because long hair was visible, diving onto a cement/tiled floor to bang one's head provoked only by the existence of the cement/tiled floor, etc.). Absent the ability to develop written plans, in conjunction with each child's parent, both schools and parents will be at risk of permitting injuries that may have been prevented. The House Committee Report accompanying H.R. 4247 (House Report 111-417) states, at p 20, that the Committee believes that, in very limited circumstances, individual crisis planning is appropriate and that the Committee expects the Secretary to promulgate regulations, under which, in such cases, "physical restraint or seclusion may be written as a crisis intervention in an individual student plan, including Individualized Educational Plans and Behavior Intervention Plans, requiring informed consent from parents." This critical exception should be in the legislation and not left to possible regulation. Proposed Action: Strike present language and revise Section 5(a)(5) lines 5 - 10 to read: "Should a pattern of behavior that requires the use of emergency restraint or seclusion emerge or be anticipated, an individualized emergency intervention plan may be developed in addition to the student's positive behavior support plan to protect the health, safety, and dignity of the student. The individualized emergency intervention plan must be developed in partnership with the parent by a team that includes a person knowledgeable about restraint or seclusion. In the absence of a mutually agreed upon individualized emergency intervention plan, local education agencies or schools will comply with policies and procedures for use of physical restraint or seclusion contained in school safety or crisis plans, provided that such school plans are not specific to any individual student."

10. MAASE does not agree with the broadened power of Protection and Advocacy (P and A) to investigate, monitor and enforce protections provided students under this Act (Section 9). According to the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15043), Protection and Advocacy "(B) have the authority to investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that incidents occurred." We believe it is both prudent and necessary to include the State Education Agency in such investigation, monitoring and enforcement according to the proposed legislation's Findings, Section 2(3) lines 14 - 16, "Similar protections are needed in schools, yet such protections must acknowledge the differences of the school environment." Additionally, Protection and Advocacy was created under the Developmental Disabilities Assistance and Bill of Rights Act and their Sec. 9 authority applies only to people with developmental disabilities. While the House Report, discussing identical language in the House bill states, at p 21, that section 9 is not an expansion of P and A authority, this is not clear from the language of section 9, as evidenced by the Minority Views in the House Report, at p 31, which contend that section 9 does expand the role of P and A. The proposed bill is for ALL students. It is inappropriate to give P and A authority to investigate matters for ALL students. Proposed Action: Revise Section 9 to read: "At the direction of each State's Department of Education, Protection and Advocacy may be asked to jointly investigate particular complaints or particular situations."
11. MAASE proposes changes to reflect the "inappropriate" use of seclusion and physical restraint. The Finding in section 2(1) states that research shows that children have been subjected to "inappropriate seclusion and physical restraint in schools." Proposed Action: Consistent with section 2(1), revise Section 3 (1) to read: "The purposes of this Act are to (1) prevent and reduce the use of *inappropriate* seclusion and physical restraint." Continue this verbiage prior to "seclusion and physical restraint" throughout the bill.
12. MAASE proposes to change the language in the prohibition on physical restraint that restricts "air flow to the lungs" to "breathing." "Breathing" is a more comprehensive term, is the term used in the bill passed by the House, and is consistent with terminology used in other statutes, such as the Rehabilitation Act of 1973. Proposed action: Amend sections 2(5) and 5(a)(1)(C) to replace the phrase "air flow to the lungs" with "breathing."
13. MAASE proposes changes in Section 2. Findings and Section 3. Purposes to reflect concerns for the safety of school personnel and the role of local educational agencies and schools in developing and implementing strategies, policies and procedures to prevent or reduce seclusion and physical restraint in schools. To be consistent with Section 2(8) and Section 3(2), Sections 2(2) and 3(5)(B) should be revised to refer to the safety of school personnel as well as students. Section 2(10) should be revised to recognize the role of local educational agencies and schools in developing and implementing strategies, policies and procedures. Proposed actions: Revise Section 2(2) to read: "Despite the widely recognized risks of seclusion and physical restraint, a substantial disparity exists between States and localities with regard to the protection and oversight of the rights of children *and school personnel* to a safe learning environment. Revise Section 2(10) to read: "Perspectives of relevant community and advocacy organizations, including those run by individuals with disabilities, *and local educational agencies and schools* are important when developing and implementing strategies, policies, and procedures to prevent or reduce seclusion and physical restraint in schools." Revise Section 3(5)(B) to read: "providing school personnel with the necessary tools, training, and support to ensure the safety of all students *and school personnel* and promoting a positive school culture and climate."

14. MAASE proposes the addition of a definition for the term “aversive behavioral interventions” in the Section 4. Definitions, a revision of the definition of “chemical restraint” and the addition of definitions for various terms adopted by reference. Proposed Action: Adopt the definition of “aversive intervention” used in New York, specifically:
- i. contingent application of noxious, painful, intrusive stimuli or activities
 - ii. any form of noxious, painful or intrusive spray, inhalant or tastes
 - iii. contingent food programs that include the denial or delay of the provision of meals or intentionally altering staple food or drink in order to make it distasteful;
 - iv. movement limitation used as a punishment, including but not limited to helmets and mechanical restraint devices; and
 - v. other stimuli or actions similar to the interventions described in subparagraphs (i) through (iv) of this paragraph
15. Revise the exceptions to the definition of “chemical restraint” to adopt the language of the bill passed by the House and state: “(A) prescribed by a licensed physician, *or other qualified health professional acting under the scope of the professional’s authority under State law*, for the standard treatment of a student’s medical or psychiatric condition; and (B) administered *as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional’s authority under State law.*” Set forth the specific definitions for each of the terms adopted by reference in subsections 4(1) and (2).
16. MAASE proposes the addition of language in Section 5(c) to clarify the authority of school resource officers and other law enforcement personnel. Proposed Action: Add a Section 5(c)(3) to read: “handcuffs by school resource officers (as such term is defined in section 4151(11) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7161(11)) or law enforcement personnel - (A) in the---
- i. case when a student’s behavior poses an imminent danger of physical injury to the student, school personnel, or others; or
 - ii. lawful exercise of law enforcement duties; and (B) less restrictive interventions would be ineffective.
17. MAASE proposes changes to Section 8. National Assessment. The Finding in section 2(8) states that school personnel have the right to work in a safe environment. The Purposes in subsections 3(2) and (5) state that two purposes of the Act are to ensure the safety of all students and personnel in schools and promote a positive school culture and climate and to assist States, local educational agencies and schools in establishing policies and procedures to keep all students and school personnel safe, including students with the most complex and intensive behavioral needs. The assessment should include an evaluation of the effectiveness of the Act in ensuring the safety of all students and school personnel. Proposed action: Add a section 8(5) to read: “analyzing the effectiveness of Federal, State, and local efforts to ensure the safety of all students and school personnel.”
18. MAASE supports the definition of “state-approved training program” in section 4(10) but proposes change to require additional training. The definition appropriately describes the scope of the required training. The bill passed by the House revised the definition to “state-approved crisis intervention training program,” which is unduly narrow and restrictive. The House did, however, add language that required training in techniques to keep both students and school personnel safe. Proposed action: Revise section 4(10) to add a new subparagraph (B) to read: “evidence-based techniques shown to be effective in keeping both school personnel and students safe when imposing seclusion or physical restraint.” and re-letter subparagraphs (B), (C) and (D) as (C), (D) and (E).

MAASE commends the attention and interest given to the safe, supportive, and dignifying treatment of all students, specifically student with disabilities, within the school setting. We acknowledge that appropriate training and guidance is necessary for all school personnel such that students are not endangered through inappropriate physical restraint or seclusion that is used solely for the purposes of discipline or convenience.

For the Executive Board,



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