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HOUSE WAYS AND MEANS COMMITTEE

HOUSE BILL 1166

EDUCATION—PHYSICAL RESTRAINT AND SECLUSION—REQUIREMENTS, REPORTING AND TRAINING

FEBRUARY 24, 2021

POSITION: SUPPORT

Disability Rights Maryland (DRM) is the protection and advocacy organization for the state of Maryland; the mission of the organization, part of a national network of similar agencies, is to advocate for the legal rights of people with disabilities throughout the state. Over the years, DRM has dedicated significant resources to representation of children with disabilities in special education matters, both individual and systemic, and to educational policy work. DRM has the unique authority to investigate when a child, youth or adult with disabilities has been, or is at risk of being, abused or neglected. Our special education work and our core protection and advocacy authority come together when children with disabilities are subjected to the use of restraint and seclusion. DRM has investigated a number of school-based restraint and seclusion injuries; it is this work that has informed our policy work since the 2002 General Assembly passed Maryland's first law governing the use of restraint and seclusion in schools.

As a member and chair of the Education Advocacy Coalition (EAC), DRM joins the testimony submitted by the EAC in support of House Bill 1166. We submit separate testimony to underscore the importance of the provisions of the bill and to share the stories of several clients who are unable to testify themselves about their experiences with restraint and seclusion.

It was our hope that the enactment of Senate Bill 786, stronger regulations and the strong guidance issued by MSDE would lead to a reduction in the use of restraint and seclusion. Unfortunately, this has not been the case. House Bill 1166 would address the underlying barriers that have prevented progress. House Bill 1166 requires analysis of the data required by Senate Bill 786, rather than simply a transmittal of the data as currently occurs each December 1st, and also requires MSDE to look for trends or patterns in the use of restraint and seclusion use and to develop an accountability system designed to reduce the use of these aversive interventions. Additionally, House Bill 1166 requires MSDE to consult with higher education institutions and to address professional development more robustly, which will enable teachers to be better prepared to meet the academic and behavioral needs of the students in their classrooms. Finally, House Bill 1166 strengthens the requirements regarding the use of seclusion. This should all lead to less reliance on restraint and seclusion.

Ideally, this Committee would hear from a panel of students who have experienced restraint and seclusion. However, the reality is that restraint and seclusion in Maryland are used disproportionately with very young children, primarily children in elementary school but even with children as young as three and four years old. Additionally, restraint and seclusion are used disproportionately with children with disabilities, many of whom are unable to communicate what has happened to them. And even if children are able to communicate what happened to them, many children who have been restrained or secluded are too traumatized by their experience to talk about it. Therefore, we offer snapshots of several of our clients who are unable to come and tell their own stories.

“Danny” is a second-grade student with attention deficit hyperactivity disorder who was secluded and restrained more than 160 times in the course of a school year. His IEP team relied on restraint and seclusion instead of considering less restrictive interventions. Danny was traumatized by these restraint and seclusion incidents, and he also suffered bruising during some of the restraints. During one eight-minute-long restraint, he cried out to staff “You’re choking me.”

“Adam” is a nonverbal sixth grader with autism who was restrained and secluded more than 100 times. He was secluded multiple times a day, ranging from three times a day to 10 times a day for 29 minutes each time. He came home from school with scratches on his back, shoulders and wrists and began to harm himself by punching himself in the head as the school year progressed. Once he obtained legal assistance and the school system brought in a behavioral specialist who developed a plan for him and focused on providing him with a way to communicate effectively, his situation significantly improved.

“Trevor” is a nine year old child with disabilities who at the age of eight was restrained and secluded more than 128 times in a three month period, causing him to be removed from his classroom for a total of 82 hours. So traumatized by these incidents that he could not return to school, he remained on home and hospital instruction until he was placed in a nonpublic special education school by his local school system. In its decision resolving a complaint filed by DRM on Trevor’s behalf, MSDE found violations of the restraint and seclusion regulations.

“Carlos” is a 14 year old foster child who, at the age of seven when DRM began to represent him, had been restrained more than 147 times during part of one school year. He was then placed in a therapeutic public school program in which, despite a medical contraindication to the use of seclusion because of his history of extreme abuse and neglect, he was secluded 57 times in the first 2 ½ months of the school year; the seclusion ended only because his foster mother withdrew him from school after he was injured during a seclusion incident. A complaint to MSDE resulted in findings of numerous violations of the restraint and seclusion regulations. Carlos was placed in a series of nonpublic special education schools and now resides in a residential program in Maryland, having narrowly avoided placement out of state.

There is no question that restraint and seclusion are dangerous. Over the years, DRM has handled cases involving children restrained by duct tape, neckties, or in equipment meant for children who cannot sit independently. DRM has investigated cases of children physically restrained and placed in seclusion for time periods well beyond the limits imposed by the regulations. We have investigated cases involving children who have sustained broken bones in seclusion rooms, and children who have sustained bruises, cuts, rug burns, and other injuries during restraint and seclusion. We have also conducted investigations of children who died while in restraint while placed in residential school programs. Those are the visible injuries. The damage caused by invisible injuries—the trauma sustained by each child subjected to restraint or seclusion—and the trauma sustained by those who witness it and those who engage in it, is incalculable.

House Bill 1166 is the necessary next step in moving forward to reduce the use of these aversive interventions and to ensure that school is the nurturing, safe learning haven it is meant to be for all children. For more information, please contact Leslie Seid Margolis at lesliem@disabilityrightsmd.org or 410-370-5730.