



April 1, 2021

SENT BY EMAIL

Aaron Frey, Esq.
Attorney General
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333

Re: March 16, 2021 Letter in Support of the Keeping All Students Safe Act (KASSA)

Dear Attorney General Frey:

I am writing to thank you for the powerful and necessary letter that you and many of your colleagues sent to Congressional Leadership earlier this month about the need to end the use of seclusion and restraint in schools. After decades of fighting against these practices on behalf of individuals with disabilities here in Maine, it was inspiring and refreshing to read such an unequivocal statement. Thank you.

As indicated in the letter, “Isolated confinement and the restraint practices banned by KASSA are inherently dangerous behavior interventions that have no therapeutic or educational value, may exacerbate existing mental health conditions, and can cause long lasting emotional trauma.”¹ Unfortunately, Maine students, and especially Maine students with disabilities, are subjected to these inherently dangerous interventions at extremely high rates. According to the most recent data from the United States Department of Education (USDOE), Maine restrains more students per capita than any other state and secludes students at the second-highest rate in the country.²

¹ The March 16, 2021 letter from Kwame Raoul and signed by 16 other Attorneys General, is attached.

² Maine schools restrain more than 5 out of every 1000 students. This is the highest rate in the nation and over 3 times the national rate. Maine schools seclude 4 out of every 1000 students. This is the 2nd

Maine has also been going in the wrong direction. According to data collected by the Maine Department of Education (MDOE), rates of restraint and seclusion rose steadily from 2014 to 2019.³ For 2019, MDOE reported that over 22,000 restraints or seclusions were used by Maine schools. DRM reported on the overuse of these dangerous interventions in 2017 and again in 2019. In those reports, we expressed concerns about student safety and the underreporting of restraint and seclusion, as well as the significantly disproportionate impacts on students with disabilities, who were the subjects of nearly all of the restraints and seclusions.⁴ In Maine, at least 90% of seclusions and restraints involve students with disabilities.⁵ As noted in your letter, the “federal government’s own data and reports suggest that school districts are violating the education and civil rights of students with disabilities through seclusion and restraint.” The same is true in Maine.

While we are hopeful that Congress will heed the call to pass the federal KASSA Act, Maine has an opportunity to demonstrate leadership in this area. As you may already know, the Maine Legislature will be considering a (to be printed) bill entitled ‘The Maine Keeping All Students Safe Act’. Our understanding is that the language of this bill will track some of the language proposed in the federal KASSA, including a ban on the use of seclusion and a ban on the use of restraint when contraindicated due to a student’s disability. Disability Rights Maine (DRM) will be supporting these changes and we hope that your office will consider doing so as well.

highest rate in the nation and 8 times the national rate. These statements are based on data drawn from USDOE, Office For Civil Rights, Civil Rights Data Collection, 2017-18, *available at* <https://www2.ed.gov/about/offices/list/ocr/data.html> ; *and*, USDOE enrollment data, Fall 2017, *available at* https://nces.ed.gov/programs/digest/d19/tables/dt19_203.20.asp ; *and*, Jodi S. Cohen, ProPublica and Jennifer Smith Richards, Chicago Tribune, “*The Quiet Rooms, National Ban on School Use of Seclusion and Restraint of Students Introduced in Congress*,” Nov. 19, 2020, *available at* <https://www.propublica.org/article/national-ban-on-school-use-of-seclusion-and-restraint-of-students-introduced-in-congress>

³ MDOE, “Restraint and Seclusion” webpage, *available at* <https://www.maine.gov/doe/schools/safeschools/restraint> Data is collected pursuant to 05–071 C.M.R. Ch. 33 (2013) (there was a slight dip in data for 2020, likely due to students being out of school buildings from mid-March through the end of the year during the covid-19 educational disruptions).

⁴ Disability Rights Maine, *Restraint and Seclusion in Maine Schools: Reviewing the First Four Years of Data Required by MDOE Rule Chapter 33* (2017), <https://drme.org/assets/brochures/CH33-Report.FINAL.pdf> ; Disability Rights Maine, *Restraint and Seclusion in Maine Schools: Reviewing the First Six Years of Data Required by MDOE Rule Chapter 33* (2019), <https://drme.org/assets/brochures/CH33.Report.FINAL.2019.pdf>

⁵ Nationally, this number is 78%. *See*: U.S. DOE, Office For Civil Rights, Civil Rights Data Collection, 2017-18, *available at* <https://www2.ed.gov/about/offices/list/ocr/data.html>

Also, just in case you are unaware, we face a unique opportunity in Maine right now, to eliminate the use of planned restraints of adults with intellectual and developmental disabilities. Of course, many of these adults started being restrained when they were children and have experienced this trauma their whole lives. It has simply been the approved method that community providers use to control behavior rather than using positive behavioral supports that help people learn different responses. The Office of Aging and Disability Services (OADS) is currently conducting listening sessions to get input on how we can change that system while still keeping people safe.

Currently, Mainers with intellectual and developmental disabilities can be subjected to plans to control their behavior through the deliberate, planned and repetitious use of restraint. These plans are often in place for years, if not the person's entire life. More than 80% of Mainers subjected to these plans have unresolved communication barriers that are likely the cause of the allegedly undesirable behavior. The planned use of restraints is not clinically appropriate or indicated, but instead functions as a punishment. Restraints should only be used in an emergency when the individual or another is at imminent risk of serious harm. DRM is advocating for the end of the planned use of restraint and for systemic changes to provide clinically appropriate positive supports to adults with developmental disabilities.

Again, I thank you for supporting the Keeping All Students Safe Act and for taking a stand for Maine kids with disabilities. Hopefully by the time these kids grow up, they will not be at risk of being restrained as adults.

If you or anyone at your office would like to discuss these issues, do not hesitate to contact me.

Thank you.

Respectfully,

A handwritten signature in black ink, appearing to read 'K Moody'.

Kim Moody
Executive Director

C: Pender Makin, Commissioner, Maine Department of Education
Jeanne Lambrew, Commissioner, Maine Department of Health and Human
Services