

November 19, 2019

To: Senator Luther Olsen, Chair
Members, Senate Committee on Education

From: Lisa Pugh, The Arc Wisconsin

Re: SB 527 Relating to: seclusion and physical restraint of pupils

Thank you for the opportunity to testify today. My name is Lisa Pugh and I am the State Director of The Arc Wisconsin, a statewide advocacy organization for people with intellectual and developmental disabilities and their families.

The Arc Wisconsin supports and has been advocating alongside other organizations for the introduction of this bill for several months, and I as a disability advocate professional have been working on issues related to seclusion and restraint of students with disabilities at both the state and national level since 2009.

Wisconsin is ahead of many states in that we have a quality seclusion and restraint law on the books, including definitions of when appropriate and safe seclusion and restraint can be used. Wisconsin passed the original law - Act 125 - because school districts, teachers and disability advocacy organizations were concerned about the potential for both students and staff getting injured or worse.

As with many laws of this type, over time we have all recognized room for improvement. Key essential areas for improvement are included in SB527.

Nationally Congress is putting pressure on states to do better in their accurate tracking of seclusion and restraint. We can expect a report from the Government Accountability Office next spring which will unfortunately feature Wisconsin data inaccuracies.

According to the most recent official data in 2018 from the U.S. Department of Education, more than 124,000 students were physically restrained, mechanically restrained, or secluded in the 2015-2016 school year. Most of these, nearly 87,000, were restrained and over 37,500 were secluded. What these numbers do not tell us, however, is how many students are traumatized and develop negative attitudes toward school with possible lifelong negative effects on their learning and potential.

The vast majority of students being restrained and secluded are students with disabilities. They are 71 percent of all students restrained and 66 percent of all students secluded, despite only being 12% of the student population. This large discrepancy is often attributed to schools' lack of alternatives in place to prevent challenging behaviors that result in the use of seclusion and restraint, to untrained school staff, and to segregation of students in self contained classrooms where these practices are believed to occur more frequently. (It is worth noting that 10% of students with disabilities in Wisconsin are either in separate special education schools or spend a majority of their time in segregated classrooms).

I mentioned an expected report by the Government Accountability Office. You may know that the GAO is a federal branch agency that provides auditing, evaluation, and investigative services for Congress. In 2018, the GAO was directed by Congress to look into the reporting of seclusion and restraint across states.

As the agency began its investigation, it became concerned that the official data coming from states was inaccurate. GAO was particularly concerned about the significant number of school districts nationally that are not reporting any seclusion and restraint incidents, even though parents and advocates indicate these practices are occurring frequently. In the 2015-2016 school year, 70 percent of the more than 17,000 school districts in the U.S. reported zero incidents of restraint and zero incidents of seclusion. GAO's initial data reliability testing raised questions about the completeness and accuracy of all restraint and seclusion data across the country. Their preliminary report noted the need for the U.S. Department of Education to take immediate steps to address underreporting.

Disability advocates have long been concerned about such under-reporting in Wisconsin. In the 2015 open records request survey by Disability Rights Wisconsin, (the only way currently to track this data) about one-fifth of all Wisconsin districts reported no incidents of seclusion and restraint and nearly 10 percent did not respond to the data request at all. In the painstaking analysis of the data from the state's 410 school districts' that responded, Disability Rights Wisconsin found a total of 20,131 incidents of seclusion and restraint were reported across our schools for the 2013-14 academic year. This figure is nearly 40% above the 14,458 incidents reported by Wisconsin to the U.S. Department of Education for that period.

As part of its investigation GAO identified 3 states to feature and Wisconsin was one they visited earlier this year. Our state was likely selected due to the significant discrepancy in the data that was uncovered by Disability Rights Wisconsin. –

The changes proposed in SB 527 will address many of the reporting concerns identified by GAO by clarifying the definition of "incident" and requiring that restraint and seclusion data be reported to the state as well as to school boards (under current law, only school boards receive the data). State level reporting of this data will be a significant improvement for many reasons.

Right now a district has no means of comparison to determine if they are doing a good job and DPI has no way to identify districts in need of support. Perhaps most importantly, parents have no way to see how their own school is doing or to use the information to make a decision about which district they may wish to attend.

The improvement in parent reporting in this bill is also key.

On a personal note, earlier this year I learned that my own daughter, who is non-verbal and has an intellectual disability, had been restrained twice. I did not learn about these restraints from her school district, but rather from another parent who heard about it in casual conversation with other school staff. It was only after I asked the district about this third-hand information that I got two written reports, many months later. Under current law I should have been told about the report within one business day. According to the report, she was restrained for 35 minutes.

We can do better. School districts need clearer definitions of what an incident is, what to do next, when it should be reported, and to whom. Parents must be engaged as active participants in finding solutions to challenges with their children, but most importantly, they should be fully informed about these incidents any time they occur.