

DISABILITY RIGHTS

at University Legal Services



DC

**RESTRAINT, SECLUSION, AND ABUSE
IN DISTRICT OF COLUMBIA
SCHOOLS
AND
THE NEED FOR ACCOUNTABILITY**

March, 2017

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*The Protection and Advocacy Program
for the District of Columbia*

UNIVERSITY LEGAL SERVICES, INC

Since 1996, Disability Rights D.C. at University Legal Services, Inc. (“DRDC”), a private, non-profit legal services program, has been the federally mandated protection and advocacy (“P&A”) program for individuals with disabilities in the District of Columbia. In addition, DRDC provides legal advocacy to protect the civil rights of District residents with disabilities.

DRDC staff directly serve hundreds of individual clients annually, with thousands more benefiting from the results of investigations, institutional reform litigation, outreach, education and group advocacy efforts. DRDC staff address client issues relating to, among other things, abuse and neglect, community integration, accessible housing, financial exploitation, access to health care services, discharge planning, special education, and the improper use of seclusion, restraint and medication.

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THE PROBLEM OF RESTRAINT AND SECLUSION OF CHILDREN IN SCHOOL IS SERIOUS.

School should be a welcoming, safe, inclusive place for all children, including children with disabilities. Yet some students have frightening experiences in schools because they are subjected to seclusion, restraint, or abuse, and most of those students have disabilities. In grades K-12 across the country from 2013 to 2014, students with disabilities served by the Individuals with Disabilities Education Act (“IDEA”) represented 67% of the students who were subject to restraint or seclusion - despite making up only 12% of the population.¹ These students accounted for 75% of those who experienced physical restraint and 58% of those subject to seclusion.² In the District of Columbia (“District”), based on the latest numbers available, from 2011 to 2012, students served by the IDEA made up 14% of the enrolled population and were 72% of the students who were subject to physical restraint.³

Though we have data reported to the U.S. Department of Education, the public is simply not given sufficient information about what is going on in the District schools. Surprisingly, the District does not have uniform regulations, policies, or practices providing standards that restrict the use of seclusion or restraint, that describe how to report and investigate seclusion and restraint, or that describe how to collect data on the frequency or durations of seclusion and restraint, injuries associated with these incidents, or instances of staff abuse. There are not standards that require incidents of misuse or abuse to be investigated, reported, and prevented. As a result, some of the District’s most vulnerable youth are subject to physically and emotionally dangerous acts with little to no oversight, consequence, or reprieve.

In the District of Columbia, based on the latest numbers available, from 2011 to 2012, students served by the IDEA made up 14% of the enrolled population and were 72% of the students who were subject to physical restraint.

The following includes a description of two recent DRDC investigations of such incidents in D.C. schools. Analysis of these incidents provides some insight into the problem. Importantly, in both instances, the District of Columbia Public Schools (“DCPS”) and the charter school violated federal law by refusing to give DRDC the records requested in a timely fashion and to the extent required by federal law. The Developmental Disabilities Assistance and Bill of Rights Act of 2000 (“DD Act”)⁴ provides critical protection, support, and advocacy services for people with developmental disabilities and safeguards their civil rights.⁵ In addition, this statute and its regulations give protection and advocacy programs (“P&As”) authority to investigate allegations of abuse and neglect of individuals with disabilities. To effectively do so, Congress granted P&As broad access authority to review records concerning alleged instances of abuse and neglect, including, but not limited to written records, drafts, handwritten notes, electronic files, photographs, video, and audiotape records.⁶ The P&A must receive these records within three days.⁷ DRDC is the District’s P&A, and we requested such records. Nevertheless, both schools refused to provide all records requested. The charter school did not provide the critical video for almost a year – and has not provided any other records related to the incident.

Similarly, though DCPS provided certain documents, it refused to provide others needed for a complete investigation.⁸

Restraint at a DCPS School

In May of 2016, DRDC received a complaint that River Terrace Education Program (“River Terrace”) staff had injured Tiffany⁹ during a restraint. At the time of the investigation, Tiffany was a 17-year old River Terrace student with an intellectual disability. We were told that two River Terrace staff pulled Tiffany’s hair, ripped her jacket, and punched her face while administering the restraint. Later that same day, her mother took Tiffany to MedStar PromptCare – Urgent Care on Capitol Hill where she was examined for injuries. The nurse practitioner noted that upon examination, Tiffany’s upper and lower lips were mildly swollen and that she had sustained a head injury. Additionally, MedStar documented the complaint that Tiffany “was hit in the lip and head banged against wall and back of chair” and that she was experiencing “L[oss] O[f] Consciousness],¹⁰ nausea, and vomiting.”

DRDC proceeded to investigate whether River Terrace staff members inappropriately restrained Tiffany, whether River Terrace appropriately documented and reported the restraint, and whether DCPS adequately investigated the incident in accordance with DCPS guidelines. DRDC requested all records from River Terrace and DCPS pertaining to the investigation through its access authority.¹¹

In response to DRDC’s investigation request, River Terrace provided two incident reports, neither of which actually described the restraint. One report made no mention of a restraint actually occurring. The other incident report mentioned in passing at the very end of the summary that Tiffany “had to be restrained again.” This description was problematic on two fronts. First, the author referenced an undocumented restraint and second, neither restraint was described in any detail. Aside from these two reports, DRDC did not receive any additional written findings or investigation materials directly pertaining to the restraint. On the day of the restraint, River Terrace’s response was to discipline Tiffany by suspending her for three days for “Assault/physical attack on student or staff, 5.09 (DCMR – § B2502.1).”

DCPS’s central office similarly failed to provide any detailed account of the restraint. DCPS shared a brief incident report stating: “[O]n the date and time above it was reported to Security by C[omplainant] 1 that C[omplainant] 2 had made allegations that S[taff] 1 and S[taff] 2 assaulted V1.” DCPS also shared several letters from the DCPS Office of Labor Management & Employee Relations (“LMER”). One LMER letter informed River Terrace in April that they were investigating the incident and another informed the school that, in May, they had concluded the investigation and determined that no action was warranted. DCPS did not share how the LMER arrived at their decision.

Based on the sparse records collected, DRDC could not make any conclusions about the actual restraint. However, DRDC concluded that River Terrace failed to appropriately document and report the restraint to DCPS and that DCPS failed to provide any documentation of a meaningful investigation or support for why they dismissed the allegations. DRDC shared these findings with River Terrace and DCPS.

Despite acknowledging that River Terrace’s incident reports “did not contain detail regarding the length of the restraint, where it occurred and who was involved,” DCPS concluded that the report was “otherwise sufficient” and that it was “clear that no injury was sustained.”

DCPS refuted DRDC’s findings. Disturbingly, despite acknowledging that River Terrace’s incident reports “did not contain detail regarding the length of the restraint, where it occurred and who was involved,” DCPS concluded that the report was “otherwise sufficient” and that it was “clear that no injury was sustained.” DCPS further claimed, without any form of documentation, that “the Behavior Technician and Behavior Specialist administered the restraints appropriately and followed the conditions for use of physical restraint indicated in agency guidelines.” In describing the course of its investigation, DCPS stated that they interviewed DCPS employees but did not share any documentation or summaries of the interviews. Instead, DCPS simply stated they “do not provide internal investigation notes or information about internal business processes that determine the outcome of cases.”

Abuse at a D.C. Public Charter School

At the end of February 2016, DRDC received a complaint stating that staff at a D.C. public charter school¹² had injured Laila¹³-- a five-year old student in a segregated special education classroom. Her father later told us that his daughter, Laila, had become unhappy after being placed in the special education classroom, and she had previously complained about the teacher pinching her. Noting injuries, including scratches to her hands and fingernail imprints on her arm, her father went to the school to ask what had

happened the day before. School staff showed her father a video in which he believed his daughter had been abused. Concerned about the safety of his daughter as well as the likelihood that this teacher may have harmed other students, her father asked the school to take corrective action to ensure student safety. The father reported that the school told him that the teacher had been fired but would not give him assurances that they would take any further steps to improve student safety.

The father reported the incident to the police who went to the school to investigate. He told the police that he had seen a video of the incident, and this was noted in an initial police report. The police report states that the case was referred to the Youth Division. Without any parents being present, a detective interviewed five-year old Laila at the school. The officer’s report noted that Laila showed abrasions on her hand, and although the police noted that Laila said that the teacher grabbed her and pushed her, based on the teacher’s report and the fact that the five-year-old said it was an “accident,” the detective recommended closing the investigation without even reviewing the video. That police report lists the case status as closed. A second similar police report dated the same day lists the status as open so the current status of the investigation is unclear. DRDC requested the police records in early March but did not receive them until December 2016. None of the records provided are dated after February 2016.

Though the school immediately provided the student’s academic records when requested, it refused to provide DRDC with the video until January 2017 – almost a full year after the request. They provided no other record of an incident report, investigation, or corrective action.

The video, which includes audio, vividly depicts an incident of abuse. The teacher tells Laila, who has gone into the hallway following another student, to “Get into the room,” but Laila, apparently curious about the activity outside, refuses. The teacher then grabs Laila by the arm and pushes her into the room, barring Laila from opening the door by apparently locking it. Laila struggles to get out. It is evident that they are the only two in the room. The teacher then exits the room and holds the door shut as she has a conversation with someone in the hall. Laila begs to go out to get a drink of water; but the teacher keeps the door shut; thereby secluding¹⁴ Laila in the room by herself while Laila begs to leave.

The teacher then grabs her arm, scolding “I told you to pick up the chair,” then suddenly shoves Laila onto the floor where Laila bangs against the floor and another chair.

When the teacher comes back into the room after several minutes, she begins shouting at Laila about her behavior. Laila begins to kick at a chair that was on its side. (Another nearby chair is also on its side.) The teacher states that she is calling her parent, and Laila says “no” as she pushes on the teacher to keep her from going to the phone. The teacher then grabs her arm, scolding “I told you to pick up the chair,” then suddenly shoves Laila onto the floor where Laila bangs against the floor and another chair. Laila jumps up and says, “Stop pushing me,” as she pushes back in anger.

The teacher then grabs her arm and states: “That is the third time you hit me, do you understand?” as Laila tries to pull away. The teacher pulls Laila to a table and says “Sit down.” Laila then takes a folder and hesitantly moves as if she is going to throw it at the teacher. The teacher walks away and says, “Throw it. Go ahead and throw it.” She then moves out of the viewing of the video, saying repeatedly, “Go over there and sit down.” Laila follows her. At this point, the video abruptly ends; any further abuse that might have happened afterwards is unknown.¹⁵ Disturbingly, during the entire incident, music was playing loudly in the room: “The Freaks Come Out At Night.”

Though at no time was Laila a danger to herself or others, she was subjected to: 1) seclusion – when the door was blocked and Laila was forced to stay in the room by herself; 2) restraint¹⁶ – when the teacher grabbed Laila and threw her to the floor then moved her around the room; 3) physical abuse – when the teacher shoved Laila to the floor; and 4) verbal abuse – when the teacher taunted Laila.

These two incidents at DCPS and a public charter school demonstrate serious systemic problems – both in the staff’s conduct during the actual seclusion and restraint and in the failure to account for, review, and take actions to prevent similar actions in the future.

THIS IS A NATIONAL PROBLEM.

Seclusion and restraint is a significant problem for our children. In 2009, the United States Government Accountability Office submitted a report to Congress: [Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers](#) in which it investigated incidents of seclusion and restraint and noted how dangerous these unregulated interventions are, commonly resulting in serious physical and emotional injuries with potentially fatal consequences.¹⁷ In 2014, similar findings were presented to Congress in [Dangerous Use of Seclusion and Restraints in Schools Remains Widespread and Difficult to Remedy: A Review of Ten Cases](#). These reports indicate that students with disabilities are excessively secluded and restrained without their parents' knowledge or consent and often by teachers and staff who are not trained in how to administer these techniques.¹⁸

Students subject to restraint can be placed in physically compromising positions (e.g., face down on the floor) that can lead to respiratory obstruction, serious physical injuries, emotional trauma, and even death.¹⁹ In fact, students have died from suffocation while being restrained even by staff members who actually received training on the use of restraints.²⁰ In most cases, however, the investigations indicate the staff members were untrained and then remained employed by the school even after the incidents were reported and investigated, thereby subjecting more students to potential abuse.²¹ One student died by suicide shortly after being repeatedly left alone.²² These practices are not only dangerous to the students, but they can also cause physical and emotional harm to the school staff who administer these violent interventions, particularly when they have not received training.²³ The failure to regulate and limit these techniques creates a serious and dangerous threat to students, families, and schools.²⁴

The majority of students who are restrained and secluded are served by the IDEA and should have safe behavioral intervention plans incorporated into their individualized education plans ("IEPs") to prevent such violent incidents.²⁵ Thus, the improper use of seclusion and restraint can violate the protections of the IDEA and deny a student a free and appropriate public education ("FAPE").²⁶ Similarly, such conduct can violate federal civil rights protection found in section 504 of the Rehabilitation Act.²⁷ These federal laws apply to both DCPS and public charter schools.²⁸

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While federal laws provide various legal rights to students with disabilities, there are few remedies for the improper use of restraint and seclusion.²⁹ According to the Senate Report, although adjudicative processes exist, they are obfuscated by a myriad of legal and administrative barriers.³⁰ There are many procedural requirements forcing the family to go through multiple levels of complaints within the school district before they have exhausted their administrative remedies such that they may proceed to court.³¹ Many instances of restraint and

seclusion go unreported, either to the school or the parents, and are only made manifest when the student comes home, and then many still go unchallenged.³² In the absence of obvious physical injuries, it is extremely difficult for the family to substantiate allegations of this type of abuse, even when the student experiences psychological injuries or trauma.³³ A clear explanation is necessary to demonstrate harm, and this burden is often placed on the student who is unable to do so as a result of age, distress, or their disability.³⁴ The problem of proof is compounded by the difficulties in obtaining records from schools and the lack of reliable data even where these incidents are reported.³⁵

In response, across the country, states have been expanding protections. “Of the 51 states, 19 by law limit restraint of all children to threats of physical danger; 23 for children with disabilities America has made significant progress in this regard. In 2009, before Congress introduced its first bill with this standard, only 3 states had this protection for all students; 5 for students with disabilities.”³⁶ Now 38 states require parental notification when schools use seclusion and restraint on children with disabilities.³⁷ Given the tremendous potential for harm and the recognition of this fact nationwide, it is critical to understand what protections the District provides.

WHAT PROTECTIONS CURRENTLY EXIST IN THE DISTRICT?

The District provides woefully inadequate protections for our children in public schools to ensure the schools are not violating civil rights protections when using seclusion or restraint. Both of DRDC’s investigations detailed in this report revealed a troubling lack of procedures, transparency, or accountability. Concerned, DRDC sent Freedom of Information Act (“FOIA”) requests to four District educational agencies – the Office of the State Superintendent of Education (“OSSE”), the Deputy Mayor for Education, the D.C. Public Charter School Board (“PCSB”), and DCPS -- to find any accountability laws, rules, or policies that apply to the school systems. Specifically, we requested:

Any regulations, policies, practices, protocols, or other documents that mandate how [charter schools are or DCPC is] required to (1) address, (2) report, and (3) investigate:

(1) student injuries, (2) incidents of abuse and neglect that take place on school property, and (3) school episodes of seclusion and restraint.

The responses were disturbing. The D.C. PCSB responded that they had “no responsive documents.”³⁸ Similarly, the Deputy Mayor for Education responded that “DME does not have the records you are requesting,” but referred us to OSSE.³⁹

Perhaps most alarming was OSSE’s response. Essentially, except for laws applying only to nonpublic special education schools, OSSE had “no responsive OSSE documents.” We were directed to DCPS and the D.C. PCSB.⁴⁰ Moreover, although the U.S. Department of Education requires the states to self-report specific information concerning instances of seclusion and restraint in each individual school⁴¹ -- including charter schools,⁴² none of the entities, including

OSSE, provided us with any guidance or policy explaining how the information for this reporting is gathered.⁴³

In 2012, OSSE did propose new regulations to increase safety and transparency in the use of seclusion and restraint in D.C.'s public and charter schools, but these rules were not adopted.⁴⁴ Even so, the protections proposed were minimal and do not meet the standards recommended by the U.S. Department of Education described later in this report. Moreover, they provided significantly less protections than those required of nonpublic special education schools in the District.

DCPS has its own Guidelines for Physical Restraint and Seclusion approved Aug. 31, 2011 by the Chancellor. These Guidelines contain substantive protections and, importantly, emphasize the use of positive behavioral supports. However, even though they do require a meeting following an incident as well as parental notice, and do require an incident report to be filed with the Instructional Superintendent, they do not require an investigation if the report indicates inappropriate or improper conduct or if there was evidence of abuse. Moreover, these are merely guidelines. As the incident at River Terrace described above illustrates, there appears to be little accountability or follow-up to ensure that incidents are, in fact, handled in accordance with the guidelines. There is no requirement that the incidents be reported to OSSE to analyze and ensure that DCPS is a safe environment and that the conduct was in accordance with federal civil rights or IDEA protections.

Nothing provided by any of the agencies requires the schools to address, report, or investigate evidence of inappropriate or improper conduct on the part of the staff during instances of seclusion and restraint or the misuse of the seclusion and restraint itself. Nothing mandates the schools to investigate or address evidence or allegations of staff abuse.⁴⁵

There is no requirement that the incidents be reported to OSSE to analyze and ensure that DCPS is a safe environment and that the conduct was in accordance with federal civil rights or IDEA protections.

By contrast, the District provides robust protections for students in nonpublic special education schools, as well as individuals with disabilities connected to the Department on Disability Services and the Department on Behavioral Health.

- Nonpublic special education school students have protections.

District children attending nonpublic special education schools have substantial rights protections meant to prevent the misuse of seclusion and restraint. For example, District law states:

All nonpublic special education schools and programs shall be prohibited from using demeaning, violent, or coercive treatment with [DC] students [and] shall not use restraints or seclusion in any form on [DC] students, other than in an

emergency circumstance [...] Seclusion and restraint shall not be used, under any circumstances, as a means of coercion, discipline, convenience, or retaliation by staff with [D.C.] students. When an emergency intervention is needed to address problem behavior, the type of intervention chosen shall be the least intrusive necessary.⁴⁶

Physically restraining or placing a student in seclusion is also prohibited, except in emergency circumstances.⁴⁷ Moreover, when an emergency exception applies, any physical restraint must be applied by personnel who are properly trained and certified,⁴⁸ and use of physical restraints is limited to reasonable force for the shortest amount of time “necessary to protect the student or other person from imminent, serious physical harm.”⁴⁹ Once the student or other person is no longer in imminent danger, the restraint must end.⁵⁰ Like seclusion, physical restraint is prohibited as a means of punishment or in response to disruptive behavior or student refusal to comply with a rule or direction.⁵¹

Critically, in addition to regulations regarding the administration of restraints and seclusion, nonpublic special education schools have reporting requirements. If any form of restraint or seclusion is used, the nonpublic special education school must file a written report. The report must include, among other information, a description of any injuries, whether to students, personnel, or others.⁵² A copy of the seclusion or restraint report must be added to the student’s permanent file and sent to the student’s parent(s), DCPS or the charter school that placed the child at the nonpublic special education school, and any other D.C. agency involved in the student’s placement.⁵³

- Other District agencies provide protections to some.

Unlike District schools, two agencies that serve individuals with disabilities in the District have significant obligations to restrict and report incidents of seclusion, restraint, and abuse, to investigate, and to take corrective action where there is evidence that staff’s actions are improper or abusive. The D.C. Mental Health Consumers’ Rights Protection Act, D.C. Code § 7-1231.09 and its implementing regulations provide extensive protections to individuals (including children) receiving services from the Department of Behavioral Health and its providers.⁵⁴ Similarly, adults with intellectual disabilities have robust protections under D.C. Code § 7-1305.10, DDA Human Rights Policy 2013-DDA-H&W-POL007. These laws are extremely important in protecting many vulnerable District adults with disabilities and their existence demonstrates how deeply troubling it is that schools do not extend the same types of protections to District students with disabilities.

Importantly, the two agencies have layers of accountability. For example, the Department on Disability Services (“DDS”) uses a detailed policy for reporting and investigating reportable incidents involving individuals who receive Developmental Disabilities Administration (“DDA”) services, and they are publicly available on the DDS website.⁵⁵ The Incident Management and Enforcement Unit (“IMEU”) investigates, reports findings, and enforces recommended remedial actions concerning reportable incidents.⁵⁶ In addition to performing individual investigations, the IMEU is charged with systematically collecting data to track trends and proactively intervening in instances where an individual or individuals may be at

increased risk of harm.⁵⁷ Similarly, DBH has extensive provider requirements for reporting, investigating, and taking corrective action where there is evidence or an allegation of abuse. There is also DBH oversight, including required DBH investigations.⁵⁸

Why are such protections available to adults with intellectual disabilities or behavioral disabilities but not available to school children with the same disabilities? Why are there no accountability provisions requiring schools to report and take systemic action to prevent future seclusion, restraint and abuse? The District has passed a law requiring policies to address bullying which require investigations of incidents. D.C. Code § 2-1535, <https://beta.code.dccouncil.us/dc/council/code/sections/2-1535.03.html>. At a minimum, the District should require similar accountability for the use of seclusion and restraint and allegations of staff abuse.

- U.S. Department of Education has important guidelines.

In response to nationwide seclusion and restraint abuses, the U.S. Department of Education (“DOE”) created “Restraint and Seclusion: Resource Document” to guide schools concerning the use of restraint and seclusion in schools.⁵⁹ The Resource Document lays out fifteen principles for states to assess the adequacy of their current protections.⁶⁰ Finally, the DOE has made it clear that OSSE as the state oversight authority must ensure accountability for District students with disabilities.⁶¹ In addition to overseeing protections in nonpublic special education schools, OSSE cannot ignore this critical duty to protect District students in both DCPS and its public charter schools.

RECOMMENDATIONS

The District must respond to this lack of accountability and take action immediately. DRDC proposes the following as beginning steps:

- The District should provide District-wide restrictions prohibiting the use of seclusion and restraint in schools unless there is an imminent danger of serious physical harm to self or others. The law should include, at a minimum, other protections recommended by the U.S. Department of Education or those required for non-public schools, and prohibit any restraint that restricts or obstructs breathing.
- Schools should develop school-wide strategies, like DCPS’ “School Climate Initiative,” to create a positive approach to discipline which would include individual positive behavioral support plans and other positive strategies to address student behavior. A great resource for this is found in OSEP Dear Colleague Letter on Ensuring Equity and Providing Behavioral Supports to Students with Disabilities dated August 1, 2016: <https://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf>.
- The District should require all schools to 1) uniformly report incidents of seclusion and restraint and staff abuse, 2) inform parents/guardians of the incident on the same day and provide them with the incident report, 3) investigate allegation or evidence of staff abuse

or the improper use of seclusion or restraint, and 4) create and implement corrective action plans when substantiated.

- The District should require OSSE to 1) create uniform standards for collecting information concerning incidents of seclusion, restraint, and staff abuse in all District school, 2) mandate the information be reported to OSSE, and 3) require OSSE to provide statistical information to the public related to this information.
- The District should require OSSE to 1) ensure that schools review allegations of misuse of seclusion and restraint or staff abuse, 2) ensure that schools have appropriately investigated these incidents, 3) review and approve the corrective action plans prepared by the schools in response to confirmed instances, and 4) follow-up to ensure the schools take the corrective action approved by OSSE.
- The District should require OSSE to 1) investigate serious allegations of staff abuse and misuse of seclusion and restraint when informed or have evidence of such instances, 2) provide corrective action plans to the schools, and 3) follow-up to ensure the schools take the corrective action proposed.
- The District should ensure that its schools are in compliance with federal legal requirements that mandate timely release of records to DRDC, the District's protection and advocacy program.

Resources:

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¹ U.S. Dep't of Educ. Office for Civil Rights, 2013-2014 Civil Rights Data Collection: A First Look, at 5 (Oct. 28, 2016), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>.

² U.S. Dep't of Educ. Office for Civil Rights, Civil Rights Data Collection: Data Snapshot: School Discipline, at 1 (Mar. 21, 2014), at 1, *available at* <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>.

³ *Id.*, at 18. At this time, more recent statistics are not available. See <http://ocrdata.ed.gov/StateNationalEstimations> for updates.

⁴ 42 U.S.C. Chapter 144, §15001 *et seq.* See *Disability Rights New York v. North Colonie Board of Education*, 1:14-CV-0744, 2016 WL 1122055 (N.D. N.Y. Mar. 3, 2016).

⁵ In 1986, Congress expanded similar protections for people with psychiatric disabilities in passing the Protection and Advocacy for Individuals with Mental Illness (“PAIMI”) Act of 1986. 42 U.S.C. Ch. 114, § 10801 *et seq.*

⁶ See 42 U.S.C. § 15043(a) (2) (J); 45 CFR § 1326.25(b), outlining an expansive, non-exhaustive list of the types of records that protection and advocacy systems have access to, including:

- (1) Individual records prepared or received in the course of providing intake, assessment, evaluation, education, training and other services; supports or assistance, including medical records, financial records, and monitoring and other reports prepared or received by a service provider. This includes records stored or maintained at sites other than that of the service provider, as well as records that were not prepared by the service provider, but received by the service provider from other service providers.
- (2) Reports prepared by a Federal, State or local governmental agency, or a private organization charged with investigating incidents of abuse or neglect, injury or death. The organizations whose reports are subject to this requirement include, but are not limited to, agencies in the foster care systems, developmental disabilities systems, prison and jail systems, public and private educational systems, emergency shelters, criminal and civil law enforcement agencies such as police departments, agencies overseeing juvenile justice facilities, juvenile detention facilities, all pre- and post-adjudication juvenile facilities, State and Federal licensing and certification agencies, and private accreditation organizations such as the Joint Commission on the Accreditation of Health Care Organizations or by medical care evaluation or peer review committees, regardless of whether they are protected by federal or state law. The reports subject to this requirement describe any or all of the following:
 - i) The incidents of abuse, neglect, injury, and/or death;
 - ii) The steps taken to investigate the incidents;
 - iii) Reports and records, including personnel records, prepared or maintained by the service provider in connection with such reports of incidents; or,
 - iv) Supporting information that was relied upon in creating a report including all information and records that describe persons who were interviewed, physical and documentary evidence that was reviewed, and the related investigative findings;
- (3) Discharge planning records; and
- (4) Information in professional, performance, building or other safety standards, and demographic and statistical information relating to a service provider.

See *Disability Rights New York v. North Colonie Board of Education*, 1:14-CV-0744, 2016 WL 1122055 (N.D. N.Y. Mar. 3, 2016).

⁷ 45 C.F.R. § 1326.25(c).

⁸ In addition to preventing DRDC from fully performing the federally-authorized investigations, DRDC was forced to divert time away from other critical advocacy in its attempt to obtain the records; thereby hampering DRDC’s mission.

⁹ The names of the individuals have been changed to protect privacy.

¹⁰ “LOC” is a commonly used medical acronym for the term *loss of consciousness*.

¹¹ DRDC specifically requested all records pertaining to the investigation, including, but not limited to, all investigations, incident reports, notes of interviews with staff, staff reports, video or any photographic evidence of the event, corrective action reports, correspondence related to the event, and any other records related to the incident.

¹² The name of the school is not provided to protect privacy because of the limited number of five-year-old students with disabilities.

¹³ Names have been changed to protect privacy.

¹⁴ The U.S. Department of Education Office of Civil Rights defines seclusion as “The involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.” U.S. Dep’t of Educ. Office for Civil Rights, Restraint and Seclusions Resource Document (May 2012) (“Resource Document”) at 10 available at <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.

¹⁵ DRDC requested further footage but did not receive more.

¹⁶ The U.S. Department of Education Office of Civil Rights defines a physical restraint for reporting purposes as: “A personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely.” It does not include “a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.” Resource Document at 10.

¹⁷ U.S. Government Accountability Office, Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers, at 7, 18-19 (May 19, 2009) (“GAO Report”), available at <http://www.gao.gov/new.items/d09719t.pdf>. See also Majority Committee Staff, U.S. Senate Health, Education, Labor, and Pensions Committee, Dangerous Use of Seclusion and Restraints in Schools Remains Widespread and Difficult to Remedy: A Review of Ten Cases (Feb. 12, 2014) (“HELP Report”), available at <http://www.help.senate.gov/imo/media/doc/Seclusion%20and%20Restraints%20Final%20Report.pdf>.

¹⁸ GAO Report at 8.

¹⁹ *Id.*, at 7.

²⁰ *Id.*, at 8-9.

²¹ *Id.*, at 9-10.

²² HELP REPORT at 4.

²³ Daniel Stewart, *How Do the States Regulate Restraint and Seclusion in Public Schools? A Survey of the Strengths and Weaknesses in State Laws*, 34 *HAMLIN L. REV.* 531, 534-35 (2011).

²⁴ HELP REPORT at 3-4.

²⁵ See generally Dept. of Ed. Office of Special Education and Rehabilitative Services Dear Colleague (Aug. 1, 2016), available at <https://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf>.

²⁶ *Id.* at 8-10; see also *Beckwith v. District of Columbia*, No: 15-cv-1284-RCL, 2016 WL 4990591 (D. D.C. Sept. 15, 2016).

²⁷ See Office of Civil Rights, U.S. Dept. of Ed., Dear Colleague Letter Restraint and Seclusion of Students with Disabilities (Dec. 28, 2016) at 12 – 16, available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>; Office of Civil Rights, U.S. Dept. of Ed., Fact Sheet: Restraint and Seclusion of Students with Disabilities (Dec. 2016) at 2, available at <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-restraint-seclusion-ps.pdf>.

²⁸ See OSER/OSEP Dear Colleague Frequently Asked Questions about the Rights of Students with Disabilities in Charter Schools under the IDEA dated Dec. 28, 2016 (“OSER/OSEP Charter Schools and IDEA”), *available at*

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/faq-idea-charter-school.pdf>; OSER/OSEP Dear Colleague Frequently Asked Questions about the Rights of Students with Disabilities in Charter Schools under Section 504 dated Dec. 28, 2016 (“OSER/OSEP Charter Schools and 504”), *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-faq-201612-504-charter-school.pdf>.

²⁹ HELP Report at 22-25.

³⁰ *Id.* at 22.

³¹ *Id.* at 22-23. The recent Supreme Court decision in *Fry v. Napoleon Community Schools*, 580 U.S. ___, Slip Op. No. 15-497, Feb. 22, 2017) at 12, now clarifies that exhaustion under the IDEA is not required “if, in a suit brought under a different statute, the remedy sought is not for the denial of a FAPE”

³² *Id.* at 19, 28-29.

³³ *Id.* at 26-27.

³⁴ *Id.* at 19.

³⁵ *Id.*, at 20.

³⁶ How Safe is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies dated Dec. 31, 2016 at 24, *available at* <http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf>.

³⁷ *Id.* at 84; see also HELP Report at 13, which found as of the time of the report in 2014, only 18 states required parental notification and only thirteen had policies limiting the use of restraint to emergencies.

³⁸ D.C. PCSB Letter to DRDC dated August 19, 2016.

³⁹ D.C. DME Letter to DRDC dated August 16, 2016.

⁴⁰ Emails from OSSE to DRDC dated October 17, 2016.

⁴¹ U.S. Dept. of Ed. Office of Civil Rights, *2013-2014 Civil Rights Data Collection 2* (June 7, 2016, revised Oct. 28, 2016). Data collection is mandated under laws and regulations implementing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and under the Department of Education Organization Act (20 U.S.C. § 3413). For a list of data elements collected, see: <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2013-14-p1-p4.doc>.

⁴² See OSER/OSEP Dear Colleague Frequently Asked Questions about the Rights of Students with Disabilities in Charter Schools under Section 504 dated Dec. 28, 2016 at 36.

⁴³ It is important to note that in 2013, in response to a request, DCPS provided DRDC with a chart listing instances of seclusion and restraint at every DCPS elementary, middle, and high school from September, 2009 to June, 2013. Only one school in the entire District reported a single instance of restraint (and it was mechanical restraint) and no seclusions. Letter from DCPS to University Legal Services dated Sept. 20, 2013. DRDC is very skeptical that the schools are accurately reporting these numbers. The lack of guidance and standards may be part of the reason.

⁴⁴ See A2502 Restraint and Seclusion

[https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/Student Code of Conduct proposed rulemaking.pdf](https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/Student_Code_of_Conduct_proposed_rulemaking.pdf).

⁴⁵ DCPS provided “Frequently Asked Questions on Mandated Reporting of Child Abuse or Neglect for DCPS Employees” which describes when and how staff are to report suspected

incidents of abuse and neglect. Staff are to report to Child and Family Services and to the D.C. Police. Staff are explicitly told not to investigate the incidents. Though it occurred in a charter school, the incident of abuse involving Laila demonstrates that reporting the incident to the police is not sufficient. Importantly, in that case, it was the father and not the school that reported the incident to the police, even though the school had seen the video.

⁴⁶ D.C. Mun. Regs. tit. 5-A, § 2814.3.

⁴⁷ *Id.* § 2816.1.

⁴⁸ *Id.* § 2816.2.

⁴⁹ *Id.* § 2816.3.

⁵⁰ *Id.*

⁵¹ *Id.* § 2816.4.

⁵² *Id.* § 2820. Other required information includes the student's name, the date of the incident, the beginning and ending times of the incident and of actual restraint or seclusion, a description of events leading up to the incident, a description of any interventions used prior to restraint or seclusion, a log of events during the restraint or seclusion (including the type of restraint), a list of participating school personnel, and a description of the short-term plan to address the student's behavior in the future.

⁵³ D.C. Mun. Regs. tit. 5-A, §§ 2820.3-4.

⁵⁴ See generally D.C. Mun. Regs. tit. 22-A5.

⁵⁵ See <https://dds.dc.gov/page/policies-and-procedures-dda>.

⁵⁶ Incident Management and Enforcement Policy: 2016-DDA-QMD-POL-01.

⁵⁷ See The Incident Reporting Policy: 2013-DDS-QMD-PR006

<https://dds.dc.gov/sites/default/files/dc/sites/dds/publication/attachments/J.9.2%20Incident%20Reporting%20Procedure%206-1-2013.pdf> and The Incident Management and Enforcement Policy:

2015-DDA-QMD-POL-01

<http://dds.dc.gov/sites/default/files/dc/sites/dds/publication/attachments/Incident%20Investigation%20Procedure%20Effective%20March%202015.pdf>.

The provider generally must conduct the investigation within five business days of the date of the incident and must collect sufficient evidence to allow for an analysis, a conclusion, a summary of the facts, and recommendations. DDS may also request a more detailed investigation. For more serious investigations, DDS Duty Officer is responsible for ensuring that immediate actions are taken to ensure the health, safety and well-being of all persons involved.

The investigation should be extensive and the DDA Investigator must interview and take written statements from the victim(s) and witness(es) of the alleged incident and identify, collect, assess, and preserve any pertinent evidence and supporting documentation. Based on this information, the investigator is required to make findings and recommendations to ensure the person's safety and to eliminate the potential for reoccurrence of the incident.

For more serious incidents involving abuse, neglect, exploitation, or serious physical injury, providers must immediately remove any employee, consultant, contractor or volunteer alleged to have committed abuse, neglect or exploitation from having any program or direct contact with people receiving supports and services through DDA

during the investigation. The IMEU Investigator must also conduct a site visit to ensure people are safe, secure evidence, identify who to investigate, and confirm whether anyone must be removed from people supported by DDA.

Once an investigation report is approved, the IMEU is to share the outcome of the investigation, including offering a copy of the report, with the person, his or her family, or legal representative within five business days. The investigative report should also include all evidence collected to arrive at the findings. DDS may impose sanctions on providers who do not comply with the IMEU policy or procedures or who demonstrate deficient incident reporting.

⁵⁸ See DBH Major Investigation Policy, <https://dbh.dc.gov/node/1109887>; DBH Reporting Major Unusual Incidents (“MUIs”) and Unusual Incident (“UIs”), <https://dbh.dc.gov/node/1135281>; DBH Protecting Consumers from Abuse, Neglect or Exploitation, <https://dbh.dc.gov/node/243642>.

⁵⁹ U.S. Department of Education: Restraint and Seclusion: Resource Document (May 2012) (“Resource Document”), available at <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.

⁶⁰ The DOE: Resource Document, at 12-13, describing its Fifteen Principles, including:

- Every effort should be made to prevent the need for the use of restraint and...seclusion.
- Schools should never use mechanical restraints [or] a drug or medication to control behavior or restrict freedom of movement...
- Physical restraint or seclusion should not be used except in situations where the child’s behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should be discontinued as soon as imminent danger... has dissipated.
- Any behavioral intervention must be consistent with the child’s rights to be treated with dignity and to be free from abuse.
- Restraint or seclusion should never be used as punishment or discipline...or as a convenience.
- Restraint or seclusion should never be used in a manner that...harms the child.
- The use of restraint or seclusion...should trigger a review...
- Teachers...should be trained regularly on...restraint and seclusion...
- Every instance [of] restraint or seclusion...should be carefully and continuously and visually monitored...
- Parents should be informed of the policies on restraint and seclusion at their child’s school or other educational setting, as well as applicable Federal, State, or local laws.
- Parents should be notified as soon as possible following each instance in which restraint or seclusion is used with their child.
- Policies regarding the use of restraint and seclusion should be reviewed regularly and updated as appropriate.
- Policies...should provide that each incident involving the use of seclusion or restraint should be documented in writing and provide for the collection of specific data that would enable teachers, staff, and other personnel to understand and implement the preceding principles.

⁶¹ See OSER/OSEP Charter Schools and IDEA at 4 (“it is important to note that, regardless of any assignment of responsibility for ensuring that the requirements of Part B of IDEA are met, the SEA is not relieved of its IDEA Part B responsibilities and retains ultimate responsibility for ensuring the provision of FAPE under IDEA.) See also OSER/OSEP Charter Schools and 504. A recent GAO Report to Congress described OSSE as an agency in confusion about its authority to oversee Charter Schools conduct. U.S. Gov. Accounting Office, District of Columbia Charter Schools: Multi-Agency Plan Needed to Continue Progress Addressing High and Disproportionate Discipline Rates (Feb. 2017) at 30-31, <http://www.gao.gov/assets/690/682673.pdf>. Nevertheless, as the Dear Colleague Letters make clear, as far as students with disabilities are concerned, OSSE is ultimately responsible.



For Immediate Release
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Disability Rights DC at University Legal Services Releases “Restraint, Seclusion, and Abuse in School and the Need for Accountability”

Schools in the District should be welcoming, safe, and inclusive places for students. By contrast, the use of seclusion and restraint in schools is unsafe and can cause both physical and emotional harm. Significantly, it disproportionately affects students with disabilities. Seclusion and restraint exists in District schools, yet the District does not have uniform standards for how seclusion and restraint must be implemented, reported, or addressed.

First and foremost, schools should be implementing school-wide strategies, like DCPS’ “School Climate Initiative,” to create a positive approach to discipline which would include individual positive behavioral support plans and other positive strategies to address student behavior. A great resource is [OSEP Dear Colleague Letter on Ensuring Equity and Providing Behavioral Supports to Students with Disabilities](#).

However, given the serious consequences of seclusion, restraint, its misuse, and possible staff abuse associated with it, accountability is critical – both so the public is aware and so such conduct can be prevented in the future. The District should have explicit standards limiting the use of seclusion and restraint only to instances of imminent danger of serious physical harm to self or others with explicit criteria describing unacceptable practices and the prerequisite use of alternative approaches. In addition, OSSE should create uniform standards applicable to all District schools for collecting information concerning incidents of seclusion, restraint, as well as instances of staff abuse, and provide this statistical information to the public. Moreover, OSSE should take an active role in reviewing any possible misuse of seclusion and restraint or staff abuse, then ensure that schools have appropriately investigated these incidents and taken steps to address problems. Finally, OSSE should itself meaningfully investigate serious incidents and require corrective action.

The following organizations also support 1) the effort to create welcoming, safe, and inclusive schools that use positive behavioral supports in a positive school culture, 2) the effort to eliminate seclusion and restraint, and, only implement the practice in accordance with strict

standardized procedures where there is an imminent danger of serious physical harm to self or others, 3) accountability which includes reporting, investigation, and follow-up of any such use, and 4) substantive and consistent oversight by OSSE.

Advocates for Justice and Education, Inc.: The DC Parent Training and Information Center

Children's Law Center

DC Lawyers for Youth

The Education Rights Center at Howard University School of Law

Inclusion Zone

Judge David L. Bazelon Center for Mental Health Law

Open City Advocates

Quality Trust for Individuals with Disabilities

SchoolTalk

University of the District of Columbia: Juvenile and Special Education Law Clinic

Find our report: **“Restraint, Seclusion, and Abuse in School and the Need for Accountability”** at our website: www.uls-dc.org.