

**NEED FOR OVERSIGHT AND RESTRICTION OF THE
SECLUSION AND RESTRAINT OF DISTRICT YOUTH
ATTENDING DC PUBLIC SCHOOLS**



October 2019

*Disability Rights DC at University Legal Services
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*The Protection and Advocacy Agency
for the District of Columbia*

DISABILITY RIGHTS DC

Since 1996, Disability Rights DC at University Legal Services, Inc. (DRDC), a private, non-profit legal service agency, 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 services hundreds of individual clients annually, with thousands more benefitting 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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DISABILITY RIGHTS DC

at University Legal Services



DRDC has long expressed concerns about the unmonitored use of seclusion and restraint in DCPS as well as DC Public Charter Schools, and remains troubled that the District is one of only a handful of states that does not have meaningful protections for public school students.¹ In March of 2017, DRDC published a report on the current state of restraint, seclusion, and abuse in District of Columbia schools and the need for increased accountability, particularly by the Office of the State Superintendent of Education (OSSE).² Unfortunately, little has changed since 2017. The investigation discussed below illustrates just one example of the continuing need for accountability and restriction of the use of seclusion and restraint in the District. For the 2017-2018 and 2018-2019 academic years, 36 public charter schools self-reported the use of seclusion and/or restraint.³ Currently, the District does not have rules that direct how schools should address, report, or investigate allegations or complaints 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. And, there is no publicly available data on how often these practices are used, or whether these schools are following the U.S. Department of Education’s guidance on the use of seclusion and restraint.⁴

P&A INVESTIGATION

Disability Rights DC at University Legal Services (DRDC) is the federally mandated protection and advocacy program for individuals with disabilities in the District of Columbia. As the protection and advocacy program for the District of Columbia, DRDC has the authority and responsibility to investigate allegations of abuse and neglect committed against individuals with disabilities. Under federal law, DRDC has the authority to “investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to [DRDC] or if there is probable cause to believe that the incidents occurred....” 42 U.S.C. §15043, 45 C.F.R. § 1326.25. Pursuant to 45 C.F.R. § 1326.25(b)(2) DRDC has access to all reports prepared by an agency charged with investigating incidents of abuse or neglect occurring at a facility.

Under DRDC’s federally mandated capacity to investigate abuse and neglect of individuals with development disabilities, DRDC sought to investigate the practice of seclusion and restraint at a DC Public Charter School (“School”) after receiving a complaint of abuse or neglect related to an incident of seclusion at the School. To conduct the investigation under our protection and advocacy federal access authority, DRDC requested records, incident reports, and policies regarding seclusion and restraint from the School, the District of Columbia Public Charter School Board (DCPCS), and the Office of the State Superintendent of Education (OSSE).⁵

¹ Jessica Butler, *How Safe is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies*, Autism Nat’l Comm. 21 (2019), <http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf>.

² <http://www.uls-dc.org/S%20and%20R%20Report%203%203%2017%20-%20Final.pdf>

³ Response to DRDC’s May 22, 2019 FOIA request to DCPCSB requesting each public charter school’s seclusion and restraint checklist, received on June 22, 2019.

⁴ U.S. Department of Education Restraint and Seclusion: Resource Document - <https://sites.ed.gov/idea/files/restraints-and-seclusion-resources.pdf>.

⁵ DRDC submitted a records request to OSSE, DCPCSB, and the School in April of 2019. Pursuant to DRDC’s federally mandated access authority under 42 U.S.C. § 15043(a)(J)(I) DRDC shall have access to records of individuals and records relevant to conducting an investigation “not later than 3 business days after the system makes a written request for the records involved.” As a part of this record request, DRDC requested records of any and all incident reports documenting the use of

In addition to submitting record requests concerning the allegations, DRDC also requested that the School, DCPCS, and OSSE conduct their own investigations into the allegations and intervene to stop the practice of seclusion and restraint at the school if the allegations were true. To date, neither DCPCS nor OSSE has provided any documentation demonstrating that they have conducted an investigation into the school-wide systemic administration of seclusion and restraint at the school in question.

Furthermore, in September of 2019, DRDC sent a letter detailing the investigation and DRDC's findings to the School, OSSE, and the DCPCSB requesting a response regarding DRDC's recommendations (outlined at the end of this report). The School responded that the School "has been and is committed to following your recommendations..."⁶ The School also indicated that "out of an abundance of caution [the School] immediately stopped all use of the calming room while awaiting [DRDC's] recommendations and [the School] immediately began investigating and revisiting its restraint and seclusion practices."⁷ We are encouraged by the School's commitment to ensuring the safety and well-being of their students, and encourage all DC schools to follow suit.

Concerningly, as of October 23, 2019, DRDC has not received a response from OSSE or the DCPCSB. We can only assume then that neither OSSE nor DCPCSB intend to implement our recommendations. Given the lack of information about the extent of the use of seclusion and restraint in the District, and the lack of verifiable data and accountability, we find this especially troubling and urge both OSSE and DCPCSB to immediately implement our recommendations to ensure the safety of all DC public school students.

SECLUSION AND RESTRAINT AT ONE DC PUBLIC CHARTER SCHOOL

DRDC received a complaint which alleged that staff members inappropriately secluded then six-years-old M.H. on multiple occasions at a DC Public Charter School. The complainant alleged that school staff members failed to document, report, or inform parents of instances of seclusion and restraint, including the incidents involving M.H.

According to the complainant, the School did not notify the parents about incidents involving School staff members placing M.H. in seclusion, and that the parents only learned about seclusion placements from M.H. The complainant also told DRDC that M.H. began experiencing reoccurring nightmares as a result of being placed in seclusion.

the rooms for all School students during the last three years. The School provided a partial response to our record request. In the response, the School contended that they were not required to "release any information or records related to students for whom we do not have parental consent to share information with you." School Counsel Letter to DRDC dated April 24, 2019. DRDC responded to this request, and again explained that federal access authority required the School to share the records as requested. DRDC Letter to School dated May 7, 2019. The School ultimately provided the requested records and information 90 days after the initial request.

⁶ School Counsel Letter to DRDC dated October 18, 2019 (10/18/2019 Counsel Letter).

⁷ 10/18/19 Counsel Letter.

Moreover, according to the complainant, School staff members administer seclusion in unsafe settings. To support this claim, the complainant shared photographs of the seclusion room with DRDC. The photos document a small padded room with an inward swinging door without an internal door handle. The door to the room appears as if it could only be opened by someone on the outside pushing the door inward into the room. None of the pictures suggested that someone placed in the room could exit on their own accord if the door were closed, even in the event of an emergency.

I. An untrained and unauthorized staff member took M.H. to the seclusion room on one occasion without documenting or reporting the incident and without notifying the parent.

In a letter responding to DRDC’s records request, the School addressed a specific incident of the use of the “seclusion room” involving M.H. that occurred in the winter of 2019 and stated that there was no evidence that M.H. has been taken to the seclusion room on other occasions.⁸ In the letter, the School’s Counsel explained that the School Principal had investigated the incident. According to the School, the Principal “acknowledged that [M.H.] was taken to the de-escalation room . . . and that school staff did not document the removal from class appropriately. [The Principal] acknowledged that the lack of documentation was a mistake and informed [the parent] that steps would be taken to retrain staff on the school’s policy related to documenting such removals to ensure that proper documentation is maintained in the future.”⁹

The School also shared an investigation report prepared by the Principal regarding the incident in question. In the investigation report, the Principal explained that she conducted the investigation after M.H.’s mother reported to her that a school staff member, T.P., had secluded M.H. In the investigation report, the Principal recounted her interview with T.P., “to find out why he took [M.H.] to the seclusion room and why he did not notify the parent as he is required to do.”¹⁰ The Principal explained that during their conversation, “Mr. [T.P.] began asking questions that *made me wonder if he had ever been appropriately trained on the proper use of the seclusion room*” and that “Mr. [T.P.] stated that *he had not had training on the seclusion room* (emphasis added).”¹¹ After speaking with T.P., the Principal spoke with T.P.’s supervisor. During this conversation, the supervisor confirmed that T.P. had not received training on the use of the seclusion rooms and that “*there had not been no [sic] training this school year* (emphasis added).”¹²

In the investigation report, the Principal stated that within two weeks of the incident in question, during an all-staff meeting, staff were instructed that “that they are not allowed to take students into the seclusion room for any reason and that the only select individuals permitted to do so are those authorized by the school.”¹³ The Principal also documented that T.P. and R.N received training on the use of seclusion the following month.

⁸ School Counsel Letter to DRDC dated April 24, 2019 (4/24/19 Counsel Letter).

⁹ *Id.*

¹⁰ School Investigation Report regarding January 15, 2019 Seclusion.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

At the very least, the Principal’s investigation findings substantiate at least one account of a school staff member inappropriately placing M.H. in the seclusion room and failing to document or report the incident. Alarming, the seclusion room was used at least 29 times during the 2018-2019 academic year before the Principal became aware that training on seclusion and restraint had not been provided to all staff using the seclusion room.¹⁴ Furthermore, as documented later in this report, the seclusion and restraint incident logs that the School provided to DRDC suggest that staff may have inappropriately administered seclusion and restraint on several occasions.

II. A DC Fire Marshall found that the School’s seclusion room was in violation of District Code.

DRDC also received allegations that the School was utilizing an unsafe room to seclude students. The pictures of the School’s seclusion room shared with DRDC depicted a door that lacked internal door handles and automated emergency releases. The School also shared a photograph of the seclusion room (below), which confirms that the door to at least one of the school’s seclusion rooms has internal hinges with no internal door handle.



Caption: School seclusion room door with no internal handle on inward swinging door¹⁵

Alarmed by the fact that the seclusion room appeared to have no means of manual exit for an occupant, DRDC contacted the District of Columbia Office of the Fire Marshal, raising concern that the door was in violation of fire and/or building code. A District of Columbia Fire Inspector inspected the room and confirmed that the room was in violation of District Code. Notably, the Inspector explained that he cited the School with a “Notice of Violation that will require them to put door closers on this doors with handles on the inside and the doors are to be able to latch from the fully open position. I also informed [School staff], that rooms that don’t allow persons to exit without being let out from the

¹⁴ 2018-2019 seclusion and restraint logs

¹⁵ Photo provided by School June 10, 2019.

outside of the room would change the occupancy of the building from an Educational Occupancy to an Institutional Occupancy.”¹⁶ The Inspector’s findings are consistent with the complaint and they substantiate the assertion that the School is placing students in an unsafe setting, one that does not meet the District’s standards for an Educational Occupancy setting.¹⁷

III. The School documentation indicates that the School may have used seclusion as a means of punishment and control on several occasions.

As part of DRDC’s investigation, DRDC conducted a review of the School’s logs of incidents of seclusion and restraint over the 2017-2018 and 2018-2019. The 2018-2019 log was labeled “Restraint/Seclusion SY 18-19.”¹⁸ DRDC’s review of these logs raises serious concerns about the way in which the School administers and documents incidents of seclusion and restraint. This review also highlights the critical need for the District to establish oversight and restrictions regarding how seclusion and restraint may be implemented, reported, and addressed in District schools.

The United States Department of Education Office of Civil Rights explains that 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.”¹⁹ Furthermore, the United States Department of Education Office of Civil Rights states that “restraint or seclusion should never be used as punishment or discipline (e.g., placing in seclusion for out-of-seat behavior), as a means of coercion or retaliation, or as a convenience.”²⁰

A review of the School’s incident reports, which were provided to DRDC in chart form, however, suggests that the School may place students in the seclusion room as a form of discipline and as a response to students not following teacher directions. In the examples below, the incident reports listed in the chart lack documentation that the student’s behavior posed an imminent danger of serious physical harm to self or others.

In one incident, for example, the reporting school staff member noted that a student was placed in the seclusion room because the “student didn’t want to listen to responses from teachers.”²¹ In this

¹⁶ E-mail from Inspector to DRDC dated May 28, 2019.

¹⁷ The School informed DRDC that “the room and door were approved upon inspection when the building was initially inspected before [the School] opened the campus” and that “the school building had been inspected annually for a Fire Inspector since opening... and there have been no citations or request for modification of the [seclusion room] from those inspections.” The School further noted that the School “immediately changed the door in order to remedy the notice of violation.” 10/18/2019 Counsel Letter. Emails from the Fire Inspector do indicate that, two months after the initial notice of violation was given to the School, the School had a contract in place to remedy the violation, but still had not completed the required work. Email from Inspector to DRDC dated July 31, 2019.

¹⁸ School Restraint and Seclusion Incident Report Logs 2017-2018 and 2018-2019.

¹⁹ U.S. Department of Education Restraint and Seclusion: Resource Document - <https://sites.ed.gov/idea/files/restraints-and-seclusion-resources.pdf> at 12.

²⁰ Id.

²¹ School Restraint and Seclusion Incident Report Log – 2018-2019 – incident dated May 13, 2019. This chart is labeled “Restraint/Seclusion SY 18-19. School’s Counsel responded that the May 13th entry noted physical aggression; however, that

situation, the reporter failed to provide any additional documentation regarding why the School determined that administering seclusion or restraint was appropriate. Without more detailed explanation, reviewers, including parents, do not know whether the students in the report were inappropriately subjected to seclusion for what the U.S. Department of Education Office of Civil Rights would likely classify as discipline or convenience. For this reason, it is especially important that the School ensure that no one administers seclusion and restraint unless: 1) the child's behavior poses imminent danger of serious physical harm to self or others; 2) other interventions are tried but are ineffective, and 3) staff provide sufficient documentation justifying the seclusion and/or restraint and the ineffectiveness of other interventions in order to prevent future incidents.

On several occasions, the School staff placed students in the seclusion room after the children expressed hunger. One student was placed in the seclusion room because "he was upset when not given pizza,"²² while another was placed in the seclusion room because he "was cranky because he was hungry" also noting that "the student had not eaten anything."²³ In one instance, a student requested a snack from a teacher. The teacher explained to the student that a snack would be given to everyone after completing project work. The "student became frustrated and walked out of the building."²⁴ As a result, the staff member placed the student in the seclusion room.

None of these incident reports suggested that the student's behavior posed an imminent danger of serious physical harm to self or others and other interventions were ineffective. In fact, based on the documentation the School provided, it does not appear that the staff even tried the intervention of providing food, an intervention that could have prevented the inappropriate conduct.

As documented extensively in DRDC's 2017 report, *Restraint, Seclusion, and Abuse in District of Columbia Schools and the Need for Accountability*,²⁵ 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.

appears to have been selected from a drop-down list; nothing in the description of the behavior discusses any alleged physical aggression. The May 13th entry says only, "Student didn't want to listen to response from teacher." In order to effectively prevent another instance of inappropriate behavior, descriptions of the incidents should include in detail the antecedent event to that the staff can effectively address the behavior using positive approaches in the future. Lack of thorough documentation impedes effective responses.

²² School Restraint and Seclusion Incident Report Log – 2018-2019 – incident dated December 1, 2017. While this entry was on the "Restraint/Seclusion SY 2018-2019" log, it does not indicate whether seclusion or restraint was used in this instance.

²³ School Restraint and Seclusion Incident Report Log – 2018-2019 – incident dated May 3, 2019.

²⁴ School Restraint and Seclusion Incident Report Log – 2018-2019 – incident dated October 12, 2018. School Counsel responded that the student had left the building. Even given this, it is unclear what, if any, other interventions were tried and why they were not sufficient. There again appears to be a drop-down menu which indicates that "reminding language, assessing basic needs, and using calming center" were used. In the documentation provided, it does not appear that once hunger was identified, any other intervention was attempted before placing the student in the seclusion room.

²⁵ <http://www.uls-dc.org/S%20and%20R%20Report%203%203%2017%20-%20Final.pdf>

OSSE AND DCPCSB DO NOT TRACK OR REPORT INCIDENTS OF SECLUSION AND RESTRAINT IN PUBLIC SCHOOLS TO THE FEDERAL GOVERNMENT.

The U.S. Department of Education's Office for Civil Rights (OCR) requires that school districts report how often students are restrained or secluded. Every two years, the federal government collects and publicly reports data from nearly all public school districts and schools as part of its Civil Rights Data Collection (CRDC).²⁶ Districts self-report and certify the data. OCR uses CRDC data in its enforcement of various federal civil rights laws prohibiting discrimination on the basis of race, color, national origin, sex, and disability.²⁷

In conducting this investigation, DRDC requested that OSSE provide any and all “written policies and procedures regarding abuse, neglect, seclusion and/or restraint.”²⁸ OSSE responded that they did not have any corresponding records.²⁹ When DRDC requested that OSSE provide any and all written incident reports documenting “the use of abuse, neglect, seclusion, and/or restraint administered against a [School] student during the last three years beginning April 1, 2016” OSSE responded that they did not have any corresponding documents.³⁰ Finally, when DRDC requested information regarding students who had been placed in seclusion or restraint, OSSE responded that they do “*not collect information on students who are placed in seclusion or restraint* (emphasis added).”³¹

Similarly, when DRDC requested that the Public Charter School Board share contact information regarding School students who have been placed in seclusion or restrained, the DCPCSB reported that they did not have “any records responsive to this portion of the request.”³²

Even though the District is responsible for ensuring the correct reporting of incidents of seclusion and restraint to the CRDC, neither OSSE nor DCPCSB even had the most basic information regarding students who had been placed in seclusion or who had been restrained at the school. This raises serious concerns about how or even whether incidents of seclusion and restraint are being reported to the federal government.³³

CONCLUSION

Currently, the District does not have rules that direct how the schools should address, report, or investigate allegations or complaints 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. By contrast, the District provides robust protections for students in nonpublic special education schools, as well as

²⁶ Government Accountability Office report on Federal Data and Resources on Restraint and Seclusion <https://www.gao.gov/assets/700/697114.pdf> dated February 27, 2019 at page 3.

²⁷ *Id.*

²⁸ OSSE Record Request sent April 18, 2019.

²⁹ OSSE Record Request Response dated May 3, 2019.

³⁰ *Id.*

³¹ OSSE Record Request Response dated May 20, 2019.

³² DCPCSB Record Request Response dated April 26, 2019.

³³ See DRDC’s 2017 Report, *Restraint, Seclusion and Abuse in the District of Columbia Schools and the Need for Accountability* at 9-11, available at: <http://www.uls-dc.org/S%20and%20R%20Report%203%203%2017%20-%20Final.pdf>.

individuals with disabilities connected to the Department on Disability Services and the Department on Behavioral Health.

For this reason, parents cannot be confident that their children are safe and are left to wonder whether schools are secluding students without training staff, whether students are being placed in unsafe rooms, and whether schools may be misusing seclusion rooms. This may be a District-wide issue. For the 2017-2018 and 2018-2019 academic years, 36 public charter schools self-reported the use of seclusion and/or restraint.³⁴ This number, of course, does not include District of Columbia Public Schools. Given the serious consequences of seclusion and restraint, their misuse, and possible staff abuse associated with them, 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.

RECOMMENDATIONS

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

- 1) The School should:³⁵
 - a. Develop and implement a system of reporting the use of seclusion and/or restraint that includes at least the following components:
 - i. The beginning and end time of each incident;
 - ii. A description of the events leading to the incident;
 - iii. A description of interventions used prior to the use of seclusion and/or restraint;
 - iv. A description of the planned approach to addressing student behavior in the future.
 - b. Provide parents and/or guardians with a copy of the above report within 24 hours of the incident;
 - c. Ensure that any and all seclusion rooms are safe, not in violation of D.C. Code, including installing interior door handles as necessary;
 - d. Only use seclusion and/or restraint when a student's behavior poses an imminent danger of serious physical harm AND other interventions have been ineffective; and
 - e. Train all staff on the administration and record keeping of incidents of seclusion and restraint.

³⁴ Response to DRDC's May 22, 2019 FOIA request to DCPCSB requesting each public charter school's seclusion and restraint checklist, received on June 22, 2019.

³⁵ The School responded that they are and/or will be implementing these recommendations and we look forward to receiving documentation of this. 10/18/19 Counsel Letter.



- 2) OSSE and DCPCSB should conduct an audit of all incidents of seclusion and restraint that have occurred at the School over the past two years;
- 3) 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. The District should require all schools to:
 - a. Uniformly report incidents of seclusion and restraint and staff abuse;
 - b. Inform parents/guardians of the incident on the same day and provide them with the incident report;
 - c. Investigate allegation or evidence of staff abuse or the improper use of seclusion or restraint, and
 - d. Create and implement corrective action plans when substantiated.
- 4) The District should require OSSE to:
 - a. create uniform standards for collecting information concerning incidents of seclusion, restraint, and staff abuse in all District school;
 - b. mandate the information be reported to OSSE, and
 - c. require OSSE to provide statistical information to the public related to this information.
- 5) The District should ensure that its schools are in compliance with federal legal requirements regarding reporting seclusion and restraint data.