



October 6, 2023

Eboni J. Govan, Attorney Advisor
District of Columbia Public Schools
1200 First St. NE
Washington, DC 20002

VIA EMAIL: dcpsregs@k12.dc.gov

Re: Proposed Regulations on Grievance Procedures for Parents, Guardians, and Visitors

Dear Ms. Govan:

These comments are submitted on behalf of Disability Rights DC at University Legal Services. Disability Rights DC is a private, non-profit organization that serves the District of Columbia's federally mandated protection and advocacy system for people with disabilities. Disability Rights DC provides disabled DC residents with individual representation, investigations of abuse and neglect, training, and systemic advocacy.

At the core of Disability Rights DC's advocacy is the commitment to defending the right of individuals with disabilities to be fully included in their communities. Disability Rights DC is especially concerned about the inclusion of students with disabilities alongside their non-disabled peers. Disability Rights DC applauds DC Public Schools ("DCPS") for establishing a grievance procedure for suspected violations of federal and local laws, including Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the District of Columbia Human Rights Act. To ensure that the grievance procedure is even more comprehensive, Disability Rights DC offers the following comments.

I. Seclusion and Restraint Should Be Included as Subjects of Grievances.

In an important step toward eliminating unnecessary seclusion and restraint in schools, the DC City Council recently promulgated regulations on the use of seclusion and restraint regarding students with disabilities.¹ Seclusion and restraint pose significant danger to DCPS students.² Still, the practice is permissible in the District of Columbia's schools and in schools across the nation. The most recent federal data show that upwards of 70,000 students nationwide were subjected to seclusion and restraint during the 2017-18 school year.³ Of these incidents, students with disabilities made up

¹ 5-A DCMR §§ 3044-3046.

² There has been extensive reporting on the physical and emotional injuries that stem from seclusion and restraint. *See generally* GOV'T ACCOUNTABILITY OFF., SECLUSIONS AND RESTRAINTS: SELECTED CASES OF DEATH AND ABUSE AT PUBLIC AND PRIVATE SCHOOLS AND TREATMENT CENTERS (2009).

³ U.S. DEP'T OF EDUC., *2017-18 Civil Rights Data Collection: The Use of Restraint and Seclusion on Children with Disabilities in K-12 Schools* 5 (2020), <https://www2.ed.gov/about/offices/list/ocr/docs/restraint-and-seclusion.pdf>.

80% of the incidents of restraint and 77% of students who were secluded.⁴ Students who are secluded or restrained may experience lasting emotional injury.⁵ In addition to being dangerous and disproportionately inflicted on students with disabilities, seclusion and restraint are largely ineffective as behavioral interventions. The Department of Education has stated that there is “no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques.”⁶

While Disability Rights DC recognizes that seclusion and restraint are now more closely regulated than in years past, we remain concerned that the Office of the State Superintendent of Education (“OSSE”) has not imposed strict reporting requirements on DCPS regarding the frequency of seclusion and restraint in schools, the amount that these practices are inflicted on students with disabilities, and whether these practices are being implemented in an abusive manner.

For those reasons, Disability Rights DC believes that DCPS should enumerate seclusion and restraint as bases for grievances or complaints under § 405.3.⁷ The current proposed regulations list the denial and abridgement of rights, arbitrary conduct standards, bullying and harassment, retaliation, and “other violation of a right granted by a relevant law that does not have a specific grievance procedure” as potential causes of action.⁸

Due to the dangerous nature of seclusion and restraint—coupled with the absence of any reporting procedures or grievance mechanisms in the seclusion and restraint regulations—DCPS should specifically list seclusion and restraint as a potential basis for filing a grievance under § 405.3. Parents and other interested parties must have avenues through which they can report the unnecessary use of seclusion and restraint against students. Including this provision in the regulations will help ensure that parents and youth have a voice to assert that seclusion and restraint were used inappropriately and will help hold educators and others who engage in the inappropriate use of seclusion and restraint to account.

II. The Regulations Should Clarify the Makeup of the CARE Teams.

The proposed regulations provide that grievances are to be filed with DCPS’s Central Office Comprehensive Alternative Resolution and Equity (“CARE”) Team. According to DCPS’s website, a CARE team “is responsible for receiving claims of discrimination, sexual harassment, bullying, or any unfair treatment of a student, parent or visitor encounters at a DC Public School.”⁹ There is no information, however, about who will comprise the CARE team. The public should know this. Moreover, in the interest of transparency and competency, the regulations should clarify that members of the CARE team are equipped to assess claims of discrimination under the federal statutes cited in § 405.2 and the various subject matters listed in § 405.3, by education and training.

⁴ *Id.* at 6-7.

⁵ GOV’T ACCOUNTABILITY OFF., SECLUSIONS AND RESTRAINTS, *supra* note 1.

⁶ U.S. DEP’T OF EDUC., *Restraint and Seclusion: Resource Document 2* (2012), <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.

⁷ 70 D.C. Reg. 011989 (Sep. 8, 2023) (to be codified at 4 DCMR § 405.3(a)-(e)).

⁸ *Id.*

⁹ DC PUBLIC SCHOOLS, STUDENT/PARENT/VISITOR GRIEVANCE PROCESS, <https://dcps.dc.gov/page/studentparentvisitor-grievance-process>.

III. The Regulations Should Include Due Process Safeguards.

The grievance regulations should allow for a formal, external review of the initial grievance and the proposed resolution. As they are currently drafted, the proposed regulations state that a grievance “may be brought before a grievance review panel” that is “comprised of three (3) persons appointed by the Chancellor or the Chancellor’s designee...”¹⁰ While the regulations assert that the panel will be made up of “disinterested persons,” grievances should be reviewed by an external body to ensure fundamental fairness. Reporters and the Aggrieved should have the opportunity to be heard on any unfavorable decisions. DCPS should delineate due process provisions and the right to a fair hearing with review by the Office of Dispute Resolution or the Office of Administrative Hearings rather than by DCPS alone. Allowing for review by the Office of Dispute Resolution or the Office of Administrative Hearings will create a consistent system that protects the rights of students, parents, and other Aggrieved individuals.

Disability Rights DC appreciates the opportunity to offer input on these proposed regulations. Please contact Disability Rights DC at (202) 547-0198 with any questions regarding these comments.

Respectfully,

/s/

Maeve Sullivan
Staff Attorney
Disability Rights DC

¹⁰ 70 D.C. Reg. 011989 (Sep. 8, 2023) (to be codified at 4 DCMR § 405.13.)