



WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS

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Testimony Before the Office of the State Superintendent of Education

For the December 12, 2019 Public Hearing on:

**The 2019 Proposed Chapter 30 Regulations, 5-E DCMR Chapter 30, Governing Special
Education in the District of Columbia**

Thank you for this opportunity to testify. My name is Maggie Hart, Counsel at the Washington Lawyers' Committee for Civil Rights and Urban Affairs, and a Ward 4 resident. At the Committee, we examine the intersection of race and disability in the District and represent people with disabilities regarding their right to fully participate in all aspects of our society, including the rights of students with disabilities to receive a free appropriate public education in the least restrictive environment. Through our work we know that student with disabilities, and especially those who are students of color, are much more likely to face discrimination in school. Relevant to today's testimony, these students are more likely to be secluded and restrained in school, subjected to exclusionary discipline, and denied a free and appropriate public education. I am here today to urge OSSE to amend the proposed regulations to ensure that strong protections are in place to prevent this discrimination and to allow all students to achieve their highest potential. While we have additional concerns with the proposed regulations and will be submitting more extensive written comments, I am here today to discuss how the proposed Chapter 30 regulations need to be amended to prevent the use of seclusion and restraint as

¹ The Washington Lawyers' Committee was founded in 1968 to address civil rights violations, racial injustice and poverty-related issues in our community through litigation and other advocacy. The Committee has a long history of working to address discrimination in housing, employment, criminal justice, education, public accommodation and against persons with disabilities. We work closely with the private bar to bring litigation and pursue policy initiatives.



punitive responses to student behavior, prevent excessive exclusionary discipline of students with disabilities, and to ensure a high quality free appropriate public education for students with disabilities in the District.

I. OSSE Needs to Amend the Proposed Regulations To Curtail the Use of Seclusion and Restraint.

Proposed sections 3045, 3046, 3047 provide new but insufficient guidance for schools regarding seclusion and restraint of students with disabilities in public schools. Seclusion and restraint can be harmful and often re-traumatizing for students with trauma histories.² Seclusion and restraint are used disproportionately against students with disabilities and particularly against Black students with disabilities³, often because of teacher and staff bias that views these students as more dangerous than their white and able-bodied peers.⁴ Because of this, we recommend that OSSE revise these sections to stop schools from using restraint or seclusion as a behavior management tool and to permit restraint or seclusion only in response to true emergencies. In the rare circumstances when restraint or seclusion is used, school should be required to provide detailed reporting to both parents and oversight agencies.

Nationally, students with disabilities are more likely to be restrained and secluded in schools.⁵ We do not have precise data about the use of restraint and seclusion in DC because

² The U.S. Department of Health & Human Services Substance Abuse and Mental Health Services Administration, "Trauma and Violence," located at <https://www.samhsa.gov/trauma-violence>. Last visited Dec. 12, 2019.

³ U.S. Department of Education Office for Civil Rights 2013-2014 Civil Rights Data Collection, A First Look: Key Data Highlights on Equity and Opportunity Gaps in Our Nation's Public Schools, Located at <https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>. Last visited Dec. 12, 2019.

⁴ See generally, Cheryl Staats, Implicit Racial Bias and School Discipline Disparities: Exploring the Connection. Kirwan Institute (May 2014), <http://kirwaninstitute.osu.edu/wp-content/uploads/2014/05/ki-ib-argument-piece03.pdf>,

⁵ Diamant, Michelle. "Feds Release New Stats on Restraint and Seclusion in Schools," DisabilityScoop, <https://www.disabilityscoop.com/2018/04/24/feds-restraint-seclusion-schools/25015/> Last visited Dec. 12, 2019.



neither OSSE, DCPS, nor the Public Charter School Board (PCSB) are monitoring the use of restraint and seclusion in schools. This lack of data, accountability, and transparency should be corrected. Based on responses received to Freedom of Information Act requests to OSSE⁶ and PCSB⁷, investigations by Disability Rights DC,⁸⁹ and reports from families, we know that schools are regularly using seclusion and restraint on students with disabilities in DC.

Additionally, the US Department of Education's OCR is currently investigating two of the largest Local Education Agencies (LEAs) in the District regarding their use of seclusion and restraint on students with disabilities.¹⁰ We also know that many schools have designated spaces for secluding or restraining students from PCSB's FOIA responses.¹¹ While the Committee is pleased to see that the proposed regulations attempt to reduce the occurrences of seclusion and restraint in DC, they are insufficient to stop schools from using seclusion and restraint as punitive measures and behavior management tools, to protect students from the trauma or re-traumatization that restraint and seclusion causes, and to hold LEAs accountable when schools seclude or restrain students in their care. In particular, we recommend:

A. Seclusion and Restraint Should Not be Written Into IEPs

⁶ OSSE Response dated June 13, 2019 to #04188 FOIA KIPP Learning Center.

⁷ PCSB FOIA Request No. 2019-57- Final Response dated June 6, 2019.

⁸ Disability Rights DC at University Legal Services, Inc. (DRDC), a private, nonprofit legal service agency, has been the federally mandated protection and advocacy (P&A) program for individuals with disabilities in the District of Columbia.

⁹ . "Restraint, Seclusion, and Abuse in the District of Columbia and the Need for Accountability," dated March 2017, located at <http://uls-dc.org/media/1181/s-and-r-report-and-statement-letter.pdf>. Last visited Dec. 12, 2019. "Need for Oversight and Restriction of the Seclusion and Restraint of District Youth Attending DC Public Schools," dated October, 2019, located at <http://uls-dc.org/media/1185/2019-seclusion-restraint-report.pdf>. Last visited Dec. 12, 2019.

¹⁰ U.S. Department of Education Office of Civil Rights Pending Cases Currently Under Investigation at elementary-Secondary and Post-Secondary Schools as of November 29, 2019, located at <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/open-investigations/dis2.html?queries%5Bstate%5D=DC>. Last visited Dec. 12, 2019.

¹¹ Public Charter School Board FOIA Response to FOIA Request No. 2019-57 dated June 6, 2019.



Seclusion and restraint are emergency responses that should not be planned behavioral or educational interventions.¹² There is no evidence that using seclusion or restraint is effective in reducing the occurrence of problem behaviors that require the use of such techniques.¹³ And, it is harmful to children: restraint and seclusion is inherently traumatic.¹⁴ The proposed regulations should not allow schools to write seclusion and restraint into the student's Individualized Education Plan (IEP) and should only allow restraint or seclusion in a true emergency. As currently written, the proposed regulations allow the use of seclusion and restraint if they are included in the student's IEP to address specific behaviors under defined circumstances. Including restraint and seclusion as responses to *specific* behaviors under *defined* circumstances makes them, by definition, planned interventions and should not be permitted under the regulations; this exception would swallow the rule.

B. There Should be a Prohibition Against Using Seclusion or Restraint on Students with a Known History of Trauma

As currently written, the proposed regulations allow schools to use seclusion and restraint on students with a known history of sexual or physical abuse in emergency circumstances or if it written into the students IEP. This is not a trauma informed approach and there should be a complete prohibition of the use of seclusion and restraint on any student with a known history of sexual or physical abuse.

¹² U.S. Department of Education Restraint and Seclusion: Resource Document dated May 2012 pages 10-13 located at <https://sites.ed.gov/idea/files/restraints-and-seclusion-resources.pdf>. Last visited Dec. 12, 2019.

¹³ Id. at 2.

¹⁴ Id. and The Us Department of Health & Human Services Substance Abuse and Mental Health Services Administration, "Trauma and Violence," located at <https://www.samhsa.gov/trauma-violence>. Last visited Dec. 12, 2019.



C. OSSE Should Maintain Centralized Data on the Use of Seclusion and Restraint Which Should be Available to the Public

The proposed regulation do not require sufficient reporting to inform families of students with disabilities or the community about seclusion and restraint practices in DC schools. First, parents must receive reports with specific details whenever a school uses restraint or seclusion. As currently written, the proposed regulations require the Local Education Agencies (LEAs) to prepare a written incident report each time a student with a disability is secluded or restrained. That incident report is then placed in the student's record and a copy is supposed to be sent home to the family. As an attorney working in this community, I have learned from my clients that incident reports are not always sent to parents following the use of seclusion and restraint, even if the LEA's official policy states that they should be provided to the parent. OSSE should require schools to document parent receipt of the written incident report and provide information to parents on how to address any concerns regarding the school's actions. This can include information about the state complaint process, the Office of the Ombudsman for Public Education, the PCSB complaint process, and contact information for the District's parent training and information center and protection and advocacy agency.

Second, to increase transparency and accountability, OSSE should require LEAs to provide all incident reports related to seclusion and restraint to OSSE. If the regulations are not amended to include mandatory reporting to OSSE, a lack of transparency and accountability at the LEA level will continue because parents do not have equal access to information in DC public charter schools, which are currently excluded from public records and open meeting laws. OSSE should maintain the data and issue an annual public report about the use of restraint and



seclusion in public schools in the District that protects student privacy, including data on the number of incidents, injuries, cases of death, and a demographic breakdown.

II. The Proposed Regulations Need to be Amended to Prevent Excessive Exclusionary Discipline of Students with Disabilities

The Committee is also concerned with proposed regulation 3044, governing disciplinary removals of students with disabilities. Students with disabilities, and particularly students of color with disabilities, are much more likely to be subjected to exclusionary discipline than other student populations. In 2018 the Council of DC enacted the Student Fair Access to School Act which increases protections for students against out of school suspensions and disciplinary unenrollment. OSSE should review and amend these regulations to ensure they comply with the Student Fair Access to Schools Act, provide the same protections, and ensure equal access to education and school personnel as students without disabilities are entitled to in the event of an out-of-school suspension. In the rare cases when a student is suspended or otherwise removed from their regular classroom, OSSE's proposed regulations should define and establish minimum standards for "interim alternative educational settings" that ensure students receive the same highly qualified teachers, access to the curriculum, and related services that they would receive if they had not been subjected to a disciplinary removal.

III. The Definition of a Free Appropriate Public Education (FAPE) Should be Amended to Ensure Students with Disabilities Make Meaningful Advancement in their Education.

The definition of FAPE in proposed regulation section 3017.7 does not fully reflect the Supreme Court's opinion in *Endrew F. v. Douglas County School District*. *Endrew F.*



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reaffirmed that the IDEA is designed to ensure that students with disabilities are making meaningful progress that is “more than de minimis” towards appropriately challenging academic and *functional* goals.¹⁵ As we know, student with disabilities in DC are less likely to obtain passing PARCC scores,¹⁶ less likely to gain admission to competitive high schools,¹⁷ and less likely to graduate with a diploma than their peers.¹⁸ We need a real commitment from OSSE in these regulations to provide a high quality education to students with disabilities that fulfills the promise of the IDEA and prepares them for life after high school. We ask OSSE to revise the proposed regulations to state that an IEP must be reasonably calculated to enable the child to make academic and *functional* progress that is more than de minimis and appropriate in light of the child’s circumstances.

Thank you for allowing me the time to speak here today.

¹⁵ *Endrew F. v. Douglas Cnty. Sch. Dist.* 137 S. Ct. 988, 999-1001.

¹⁶ OSSE 2019-2023 Strategic Plan p.18 located at https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/OSSE%202019-23%20Strategic%20Plan.pdf. Last visited Dec. 12, 2019.

¹⁷ Perry Steins, *Does every D.C. child have a fair shot at attending an elite high school? The city is trying.* Located at https://www.washingtonpost.com/local/education/does-every-dc-child-have-a-fair-shot-at-attending-an-elite-high-school-the-city-is-trying/2019/12/01/f0be55e0-f01b-11e9-89eb-ec56cd414732_story.html. Last visited Dec. 12, 2019.

¹⁸ DC 2019 4-year Adjusted Cohort Graduations Rates, by student group, accessible at 2018-2019 Adjusted Cohort Graduation Rate located at <https://osse.dc.gov/publication/2018-19-adjusted-cohort-graduation-rate>. Last accessed Dec. 12, 2019.