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Sent via Email Only to: Jacqui.kelleher@vermont.gov

Jacqui Kelleher, PhD
Vermont State Board of Education
1 National Life Drive, Davis 5
Montpelier, VT 05620-2501

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In re: Unmet Needs Related to Restraint, Seclusion, and Exclusionary Discipline

Dear Jacqui:

On November 17th, 2021, the Special Education Advisory Panel discussed the issue of the use of exclusionary discipline, restraint, and seclusion on students with disabilities. As you may recall, our discussion was robust and many members of the panel shared very personal stories of their, or their children's experiences with these practices.

One member shared the heartache and heartbreak of learning that her child was frequently placed in a room, alone, with the lights off and the door cracked open, and an adult standing outside. She shared the feeling of being gaslit when she was told repeatedly that this was not under the rules, a seclusion. Another described the experience of being asked to consent to a plan to shorten the child's school day when the child exhibited challenging behaviors, and then watching this plan be implemented without consent.

After the meeting, we received the following story from another panel member:

My son is resilient and strong. He is also a person of color, a person with a disability, and a person who has grown up in poverty. As a five, six, seven, eight year old he was restrained and secluded more times than I can count or will ever know, because they were not reported. He was identified at that young age as "emotionally disturbed" – it took an independent evaluation in third grade to identify three specific learning disabilities: Dyslexia, Dyscalculia, and Dysgraphia; until sixth grade to identify a Central Auditory Processing Disorder, and until eighth grade to find that he also had expressive language deficits! He was sixteen when we learned he had previously unrecognized sensory issues. I had no idea he was secluded for years. He was never an imminent threat to anyone, but he would come home with bruises, handprints on his body. I often think about the complex combination of disabilities he has, and imagine what his education might have looked like if everything we now know had

been identified when he was small, the appropriate services and supports he could have received. Instead, because that didn't happen, he has trauma and PTSD from these restraints and seclusions. If it were up to me, we would not allow restraint and seclusion in Vermont schools because the trauma these practices cause is always more significant than whatever is happening in the moment.

Another shared her child's story as well:

My son is a 4th grader at a small public school. He has been subjected to many seclusions and half-day suspensions for disability-related behavior. He is small for his age (only in the 25% for weight and height on the Down Syndrome growth chart!), so I would consider it a high bar for him to be an "imminent threat" of substantial bodily harm to himself or others, and therefore needing seclusion. Yet, he was secluded frequently in what is called the "quiet room." He would be blocked in the room with dim lights, and adults using their bodies to prevent him from leaving, sometimes for over an hour. Sometimes, the school would call me to inform me of these incidents, but they never put anything in writing or offered a debrief session. I'm frequently called to pick him up from school due to his disability-related behavior. I recently received his attendance records for last year; these show that none of these events were documented as suspensions. I am now waiting for the school to send me all years of his attendance records, along with all disciplinary reports to see if this was a one-year occurrence, or a larger pattern. I did not personally track all the times I had to leave work to pick him up early, and therefore I have no way to "prove" what has happened. He also has a behavior plan which I support but am finding is rarely followed. I believe that this school is not an appropriate or accessible place for him. Without the school completing required record keeping, I am worried that it will be difficult to make a data-driven placement decision that considers his actual experience of seclusion and suspensions.

We know that through the Task Force on Equitable and Inclusive School Environments is working on recommendations to the legislature regarding data collection and the elimination of exclusionary discipline; their work does not appear to address the practices of restraint and seclusion. While that work is pending, we feel it is an appropriate time to identify the use of exclusionary discipline and the use of restraint and seclusion as areas where there are unmet needs for students with disabilities.

In addition to the risks of physical harm and death that come with the use of restraint, restraint and seclusion are traumatic events. In 2019, for example a review of thirty-five studies found that the incidence of post-traumatic stress disorder after seclusion and restraint varied from 25% to 47%.¹ As Dr. Van Der Kolk explains in *The Body Keeps the Score Brain, Mind, and Body in the Healing of Trauma*, intense emotions activate the limbic system (the amygdala) and when traumatized people are presented with thoughts, sounds or images related to their

¹ Chieze, Marie et al. "Effects of Seclusion and Restraint in Adult Psychiatry: A Systematic Review." *Frontiers in psychiatry* vol. 10 491. 16 Jul. 2019, doi:10.3389/fpsy.2019.00491.

experiences, “the fear center triggers the cascade of stress hormones and nerve impulses that drive up blood pressure, heart rate, and oxygen intaking – preparing the body for fight or flight...”² When this happens, the part of the brain that is a speech center sees blood supply cut off, preventing a person experiencing or re-experiencing trauma from being able to put their thoughts and feelings into words.³ In the school setting, this means that a child who is already not emotionally regulated also loses their ability to voice their emotional state or needs, creating a negative cycle, and a barrier to school being a safe place for a student who has been restrained or secluded.

We identify this in the as an area where there are unmet needs because our experiences are that these practices are used disproportionately on students with disabilities, because these practices impact students’ access to FAPE, and because existing Agency oversight, regulations, professional development and technical assistance still leave us with grave concerns regarding data collection, adequate training of school personnel, need for change in practices, and need for parent education on parent and student due process rights when it comes to the use of restraint, seclusion, and exclusionary discipline.

We make the following recommendations to address these areas of unmet need:

- (1) **Data Collection.** The current system relies on self-reporting from LEAs on the use of restraint and seclusion. Based on the experience of several members, this reliance is believed to result in the Agency having inaccurate information regarding the actual use of exclusionary discipline, restraint, and seclusion in our schools. We theorized a few reasons for this. One reason is differing interpretation of what “counts” as a restraint, seclusion, or suspension. For example, when a parent is called to pick up a child early, this is often documented in attendance records as “parent signed out” or something like this, rather than a partial-day suspension. In addition, there is a perception in the field that if a door to a space is not fully closed, a child is not secluded, and so no Rule 4500 report is made, much less a report to the superintendent or the AOE.

Based on our experiences, we are particularly concerned with the undercounting of informal removals where a parent is called to pick a student up early, or asked to bring a child in late, or placed on a shortened school day by a building administrator and without the meeting or consensus of an IEP (or 504) team. We have similar concerns about the undercounting of restraint and seclusion due to ongoing misconceptions of what “counts” as something that must be reported under Rule 4500.

We recommend altering the reporting system to allow parents and guardians to make reports of restraints, seclusion, and exclusionary discipline, with affirmative follow up by the Agency when no matching report is received by the Agency from the LEA. We

² Van Der Kolk, Bessel (2014). The Body Keeps the Score, Brain, Mind, and Body in the Healing of Trauma. 42.

³ Id. At 43.

recommend parents not be required to use the Administrative Complaint process to report a possible violation of Rule 4000 or Rule 4500.

We recommend auditing the categorization of informal removals to understand the pervasiveness of these practices and improve the reliability of data collected.

And we recommend conducting a data collection (such as a phone or paper survey, focus groups, etc.) specifically targeted to parents to collect information on frequency of restraint and seclusion, whether the Rule 4500 processes for documentation, reporting, debriefing, and complaints were followed, and other opinions or perceptions regarding the use and impact of restraint, seclusion, or exclusion.

- (2) **Data Action.** While improved data collection is one important step toward ensuring an accurate understanding of the use of restraint, seclusion, and exclusionary discipline, it is important to then implement change to address what the data reveal.

We recommend that, on an individual level, reports of use of restraint, seclusion, or exclusion be shared with the full IEP team when events occur, and in periodic summaries along with other PBIS information which will allow the team to identify patterns or trends that will impact discussion and decision making regarding educational benefit, necessary services and supports to provide FAPE, and other key IEP team decisions.

We hope to have ongoing interactive dialogue to provide advice and input into how to reduce or eliminate these practices.

- (3) **Training.** Currently, Rule 4000 has no training requirement for the use of exclusionary discipline. Rule 4500 has a training requirement for staff who engage in restraint or seclusion, but relies on LEAs to select training programs and ensure staff are trained, without Agency oversight. And, while training on the use of restraint and seclusion is required, members' experiences demonstrate that training is inconsistent, students are restrained or secluded by untrained staff, and that fundamental concepts such as the very definitions of a restraint or seclusion are interpreted in a wide variety of ways across the state. We are particularly concerned with differing understandings of the definitions of restraint, seclusion, and suspension, and of what it means to be at "imminent risk" of a child causing "substantial bodily injury."

We recommend adding to existing training and technical assistance materials by creating a training video and post-training assessment for building administrators, classroom teachers, special educators, and other related services personnel who may be involved in (or observers to) restraint, seclusion, and exclusionary discipline.

(4) **Use of General Supervision Authority.** In formal guidance, the Office of Civil Rights has explained that the use of restraint and seclusion may cause a denial of FAPE or be discriminatory. The repeated use of restraint can be evidence that a student's current array of services are not addressing the student's needs. *Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities* at 11 (December 28, 2016). Use of restraint is discrimination if it constitutes unnecessary different treatment, is based on a policy, practice, procedure, or criterion with a discriminatory effect, or denies a student's right to FAPE. *Id.* at 12. In addition, subjecting a student to restraint based on assumptions or stereotypes about disability is a form of discrimination. *Id.* at 13-14. FAPE can be denied through the use of restraint that has a traumatic impact on the student, and some students may be especially physically or emotionally sensitive to these techniques. *Id.* at 17. Students who have experienced trauma in the past may be especially vulnerable and impacted by coercive techniques in significant ways. *Id.* at 23.

At the same time, however, Rule 4500 appears to only require the Agency of Education to review reports received pursuant to the rule to determine when schools need additional training or corrective action.

We recommend that the AOE use its general supervision authority to engage in targeted monitoring of districts where there are reports of repeated use of restraint or seclusion or restraint-like or seclusion-like practices, or reports of use of these practices without required documentation and offering of a debriefing session, whether these reports are made to the Agency by a Superintendent pursuant to Rule 4500, or from another source, such as a parent.

(5) **Changes in practice.**

Eyewitnesses: In our discussion, members noted, repeatedly, that they did not believe that Rule 4500 or Rule 4000 violations were the result of bad faith or ill intent, but, rather, of genuine misunderstanding. This can also arise when a staff person is operating on their own with a student. Ensuring a second person is available to witness any use of restraint or seclusion (or activities that might look or feel like restraint or seclusion) should be an implemented practice. We also recommend consideration of a requirement to install cameras in rooms that may be used for seclusions or seclusion-like activities to allow for oversight of these activities and shared understanding among all team members for what occurred during a restraint by having shared access to such recordings.

IEP Amendments: Because repeated use of restraint, seclusion, or exclusionary discipline can be an indicator that an IEP is not meeting the needs of student with a disability, guidance for LEAs on the need to convene an IEP meeting to amend the IEP when such practices have been used could be helpful. The need to amend an IEP when new information arises, whether it be lack of expected progress, or repeated use of the practices of restraint, seclusion, or exclusion, appears to be an area of confusion in the

field. Instead, other practices that may impact the receipt of FAPE, such as a shortened-school day, change of placement, or greater exclusionary discipline, are implemented.

Confusing and Variable Terminology: Another practice that appears common among districts is using words or labels that make it harder to identify whether a restraint or seclusion practice is being used. For example, a child is escorted to the “Take a break room” or the “Extra Space” or the “quiet room”, it is hard to know if this is a room where a child is receiving support, or is alone and unable to leave. Similarly, if a child is placed in a “Handle With Care therapeutic hold”, a parent may not understand this is a form of restraint. Using these terms obfuscates from what the child is experiencing and makes it more difficult for parents and IEP teams to know whether a child is being restrained or secluded, and whether these restraints or seclusions are being used in compliance with or in violation of state regulations.

- (6) **Parent Training.** Many parents are not aware of the requirements of Rule 4000 or Rule 4500. These are generally applicable rules not included in the Notification of Parental Rights. They do not know that their children have due process rights before a suspension or expulsion. They do not know they have a right to a written description of what happened when a restraint or seclusion was used, or that they can have a meeting to debrief the event. And, they do not know what rights they have if there is reason to believe that a restraint or seclusion violated Rule 4500. We recommend that the AOE partner with community stakeholders, including Vermont Family Network and the Federation of Families for Children’s Mental Health to provide parent trainings on a regular basis on these topics, to ensure parents have the tools to advocate when these practices are being used.

We look forward to further discussion regarding these areas of unmet need during a future SEAP meeting or in a separate meeting.

Sincerely,

/s/ Rachel Seelig
Rachel Seelig
Chair, State Advisory Panel
rseelig@vtlegalaid.org
(802) 383-2217

Cc: Chris Case (chris.case@vermont.gov)
Tracy Watterson (tracy.watterson@vermont.gov)
Kate Anderson (kate.anderson@vermont.gov)