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Testimony on Student Safety As Envisioned in H. 409 and S. 138

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U.S. Department of Education Guidance

“There is no evidence that the use of restraint or seclusion is effective in reduction of problem behaviors.”

– U.S. Dep’t of Education 2012 [Restraint and Seclusion Resource Document](#)

Disproportionate Impact Students with Disabilities

- Students with Disabilities make up:
 - 20% of Vermont school population (combined IEP and 504 eligible)
- But experience:
 - 83.33% of mechanical restraints
 - 78.4% of physical restraints
 - 74% of seclusions

Restraint & Seclusion Can Be Discrimination

- Unnecessarily treating students with disabilities differently from students without disabilities
- Implementing policies, practices, procedures, or criteria that have an effect of discriminating against students on the basis of disability or defeating or substantially impair accomplishment of the objectives of the program or activity with respect to students with disabilities
- Denying the right to FAPE



Student Y

- You child (under 7) with known history of homelessness and presence in DV situation
- Enrolled in Kindergarten, secluded several times in padded room over 1.5 months – parent disenrolled student when could not get needs met / stop the seclusions
- Enrolled again the next year, restrained or secluded at least 5 times

Restraints 1 and 2

- “Overturning materials and furniture”
 - Release from restraint based on timer
- “Grunted and hit principal”
 - No documented less restrictive alternatives
 - No indication of imminent risk of substantial bodily injury
 - Release from restraint only upon “arms and body stops moving”
 - Assumption of plan to elope based on “staring out the door”

Restraints 3 and 4

- On playground
- Restrained 1st: “while waiting for [another staff] to arrive”
- Restrained 2nd: “to move off playground because other children were coming out”
- “Threw a chair” that landed 8-10 inches from staff person
- “Repeatedly hit and kicked with light force”
- Not released until had a “calm body”

Restraint 5 / Summary

- Climbed over playground fence
 - Pushed down to ground on back (“supine restraint”)
 - Led to screaming pain, bruising, reported by PCP to DCF who did not investigate
- +3 restraints in school year
 - Restraints resulting in injury that required outside medical care
 - No evidence of reporting to Superintendent or AOE

Problems with Restraint and Seclusion in Vermont

- Ongoing use of prone restraint
 - Use of restraint and seclusion beyond the bounds permitted in Rule 4500
 - Excessive use of restraint and seclusion
 - Disproportionate use of restraint and seclusion on children with disabilities
 - Inadequate data collection on use of these practices and action in response to the little data that is collected
- No meaningful investigation or complaint process for inappropriate use of restraint and seclusion
 - Inadequate training and oversight of the use of restraint and seclusion by the Agency of Education
 - Lack of monitoring of use of restraint and seclusion practices and Rule 4500 compliance.
 - Absence of Parent Training

H. 409

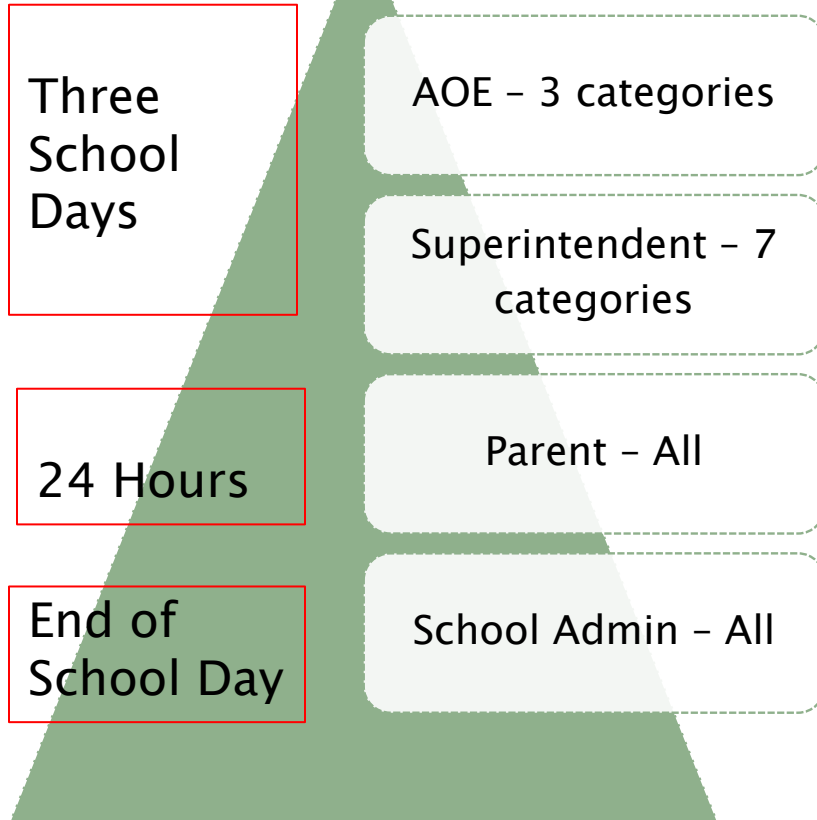
- Does not advance Vermont in limiting the use of these harmful practices
- Mostly overlaps with, or is less comprehensive than, Rule 4500

- Examples:
 - Mechanical restraint definition is much more limited in H. 409
 - Physical restraint is broader, and does not limit the use to situations where there is an imminent risk of serious bodily injury
 - Definitions of seclusion and chemical restraint are not substantively different
- **Positive:**
 - **Full prohibition on Seclusion**

Recommended Amendments to H. 409

- Full prohibition on use of prone restraints
- Substantial increase in data collection, monitoring, and technical assistance to limit use, and correct improper use of, restraint and seclusion
- Creation of independent complaint and investigation process
- Remedies for students harmed by these practices
- Increased training on de-escalation techniques and PBIS implementation
- Parent training and advocacy resources

Data Collection Rule 4500



- AOE Report only Required if:
 - Death or injury requiring outside medical treatment
 - Student restrained or secluded more than 30 minutes
 - Restraint or seclusion used in violation of rules

Recommended H. 409 Amendment – Data

- All uses of restraint and seclusion reported to AOE within 3 school days with copy of 4500 documentation
- Data collection include protected class info
- AOE adds use of restraint and seclusion to dashboard at school, district / SU level, and state level annually; Report to Legislature
- Creation of Training and Data Council on Restraint and Seclusion to provide oversight

Recommended H. 409 Amendment - Complaint and Investigation Process

- Need a process external to the individuals involved in restraint and seclusion to review incidents
- Recommend establishing independent reviewers through AOE contracts similar to HHB
- Empower to order corrective action including training, coaching, referral for discipline, and remedies for students.

Recommended H. 409 Amendment - Training

- Creation of AOE permanent state-level staffing to
 - Oversee alignment of school climate improvement initiatives (including limiting use of R&S)
 - Create or select training for educators on data literacy and relevant content on school climate improvement (including R&S)
- Provide summer 2023 re-training on de-escalation and student safety to all SD/SUs and contracted Designated Agencies still using training systems that involve prone restraint and seclusion

Recommended H. 409 Amendment – Monitoring / Oversight

- Creation of Training and Data Council on Restraint and Seclusion to provide oversight
- Use expanded data collection to identify schools in need of targeted or selective monitoring to reduce the use of restraint and seclusion and provide training, coaching, and other technical assistance

Supporting School Safety

- Prevention of catastrophic events at schools is critically important.
- Students of color and students with disabilities must be centered in developing systems to ensure school safety.

Section 1485

- Does not:
 - Define Behavioral Threat Assessment
 - Define Behavioral Threat
 - Identify the purpose of a Behavioral Threat Assessment
 - Describe the scope of authority of a Behavioral Threat Assessment Team
- Community Violence Prevention Task Force Final Report
 - Recommends developing a standardized behavioral health assessment tool for the SU/SD and community level – not the individual student level

Landscape of School Removals

- [Vermont AOE Dashboard: \(2020\)](#)

- School Conduct Violation: 3,294
- Fighting: 550
- Disorderly Conduct: 357
- Threat/intimidation: 278
- Danger to Self/Others: 201
- Tobacco: 190
- Harassment: 138

- Assault/Battery/Maiming : 112
- Bullying: 102
- Alcohol Sale or Use: 68
- Weapons Possession: 48
- Property Damage: 39
Vandalism: 36
- Burglary/
B&E/Theft/Larceny: 32
- Domestic assault: 13

Existing Law Applicable to All Students: [Rule 4311](#)

- Suspension <10 days:
Informal hearing before an appropriately designated school official
 - notice of the charges
 - an explanation of the evidence against the student
 - opportunity to present his side of the story
 - Decision in writing to the parent/guardian
- Suspension ≥10 days:
formal hearing before the school board
 - Written notice of: charges, date, time, and place of hearing, right to legal representation, and possible penalties involved
 - Opportunity to present evidence
 - Opportunity to cross-examine witnesses
 - Written decision to parent/guardian

Existing Law Applicable to All Students: [Rule 4311](#) (2)

- Immediate Threat
 - To self, others, property or educational environment
- Authority: whatever action is appropriate under the circumstances, including immediate suspension pending a hearing as soon as possible thereafter.
- If weapon brought to school: must refer to law enforcement and expel for a calendar year unless a special circumstance applies

Existing Law Applicable to Students with Disabilities

- No removal for >10 cumulative or consecutive days without:
 - A re-evaluation under 504
 - Determination behavior was not a manifestation of disability
- If MDR finds manifestation:
 - 504 team may change program or placement, or design, amend, or enforce a behavior management plan
- If weapon case – may place in IAES for up to 45 days
- Parent right to Expedited Due Process or OCR Complaint

Existing Law Applicable to Students with Disabilities

- Case-by-case determination of whether a change in placement is appropriate for code of conduct violations.
- Must consult with case manager to remove from placement and place in IAES, other setting, or suspension up <10 consecutive days.
- At 10 days: MDR
- If no manifestation → can discipline as any other student
- If manifestation:
 - Continue to provide educational services
 - Functional Behavioral Assessment
 - Provide behavioral intervention services to prevent recurrence

Manifestation Determination Review

- Who: LEA, parent, relevant members of IEP team
- What:
 - Review relevant info, IEP, teacher observations, info from parents
 - Decide:
 - Was conduct caused by / did it have direct and substantial relationship to child's disability
 - Was conduct direct result of failure to implement IEP

A note on “threat”

- Rule 4500 (Restraint and Seclusion):
 - Physical Restraint means the use physical force to prevent an imminent and substantial risk of bodily harm to the student or others.
 - Substantial Risk means:
 - an imminent threat of bodily harm where there is an ability to enact such harm.
 - Only exists when all other less restrictive alternatives to defuse the situation have been exhausted or failed or the level of risk prohibits exhausting other means

Problem: Poor Implementation of Existing Law

- November 2021: 7 year old sent home and parents directed to get risk assessment
 - Local mental health agency screened and did not recommend school exclusion
 - District insisted on 2nd evaluation, and no return to school – evaluation would take 1 month
 - DLP became involved, and school agreed to return student – but then delayed – staffing
 - After eligibility for IEP determined, months before program put in place

Proposal: Expand Use of MDR and PBIS

- Eliminate statutory authority for Threat Assessment Teams
- Expand obligation to use Manifestation Determination Review for perceived threatening behaviors, regardless of potential disciplinary consequences, or disability status
- Ensure funding of and training for building and district level administrators on PBIS that prevent students from escalating to the point of being perceived as posing as a threat, restorative justice, and existing discipline law

Draft Language

- Define Behavioral Threat
- Define Manifestation Determination Review and expand beyond the scope required by Rule 4000
- Define Manifestation Determination Review Team for students with and without disabilities
- Provide further clarification that any threat assessment must be conducted consistent with, not separate from, exclusionary discipline rules, MTSS and PBIS systems, IDEA, and 504.

Proposal: Data Collection

- Improve and expand data monitoring, analysis and reporting of
 - Threatening behaviors and other student behaviors
 - Disciplinary responses to student behavior including use of exclusionary discipline
 - Use of restraint and seclusion
 - Incidences of hazing, harassment, and bullying
- Use data to identify districts in need of additional resources and training

Proposal: Create State Level Staffing

- Permanent state-level staff to provide subject matter expertise on equitable and inclusive school environment
 - School climate
 - MTSS / Early MTSS
 - PBIS
 - Restorative approaches
 - Social-Emotional Learning
 - Trauma-Informed Schools
 - Restraint & Seclusion
 - Hazing, Harassment, and Bullying

Proposal: State Interagency Committee

- That examines the intersections between AOE, Agency of Human Services departments (including Department of Mental Health, Department of Health, Department for Children and Families, Department for Disabilities, Aging, and Independent Living), and the Office of Racial Equity as they connect with this topic of equitable and inclusive schools

Proposal: Fund resources for educator training

- **Data-related training**
 - Definitions of behaviors and responses to behaviors
 - Literacy on social, emotional, and behavioral indicators that involves disaggregating data and other equity considerations
- **Content-level training**
 - Alternatives to exclusionary discipline, restorative practices, as well as implementing existing exclusionary discipline rules with fidelity

Proposal: Legislate Definitions

- Most serious behaviors
- Suspension
- Expulsion

Proposal: Improve HHB Response

- Reform Harassment standard
- Ensure staff designated to investigate HHB are annually trained.
- Require offering of safety plans to victims of HHB that do not inconvenience the victim
- Ensure differentiated response to HHB taking into account the characteristics of the alleged victim and alleged abuser, including disability, age, gender, race, [all protected characteristics].