

House Committee on Education
Testimony on Restraint & Seclusion Bill
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Mr. Chair and Members of the Committee,

Thank you for the opportunity to testify on H. 409, the Restraint & Seclusion bill.

My name is Rachel Seelig, I am director of the Disability Law Project at Vermont Legal Aid. Our project represents people with disabilities who have legal problems arising out of those disabilities. We are part of the state Protection & Advocacy System, along with Disability Rights Vermont. Over the past five years, we have represented or advised around six hundred students with disabilities and their parents on education law issues. Approximately 15% of these cases have some element involving improper or illegal use of restraint and seclusion on students with disabilities.

Vermont has many problems with the use of restraint and seclusion in our schools.

H. 409 needs significant amendment to address these problems, short of an actual ban on all use of restraint and seclusion. Problems include:

- 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 venue to seek review or remedy of 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

Federal Guidance

In a May 15, 2012 resource document issued by the Office of Civil Rights at the U.S. Department of Education discouraged the use of restraint or seclusion generally, provided fifteen guiding principles, recommended full prohibition of mechanical restraint, never using restraint or seclusion for disciplinary purposes, and only using these practices if the student poses “imminent danger of serious physical harm to self or others.”

On December 18, 2016 the Office of Civil Rights in the U.S. Department of Education issued a Dear Colleague letter advising on how the use of restraint and seclusion in public schools are limited by Federal civil rights laws, and how the use of these practices can result in discrimination against students with disabilities.

This guidance goes on to explain that while the data disparity alone does not prove discrimination in this context, it does raise the question of whether our districts are imposing restraint and seclusion in a discriminatory manner. OCR identified three ways in which districts discriminate in their use of restraint and seclusion:

- (1) Unnecessarily treating students with disabilities differently from students without disabilities;
- (2) 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; or
- (3) Denying the right to FAPE. The repeated use of restraint can be evidence that a student’s current array of services are not addressing the student’s needs.ⁱ 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.ⁱⁱ Students who have experienced trauma in the past may be especially vulnerable and impacted by coercive techniques in significant ways.ⁱⁱⁱ

In addition, subjecting a student to restraint based on assumptions or stereotypes about disability is a form of discrimination. *Id.* at 13-14.

The U.S. Department of Education has also made clear that there is no evidence that the use of restraint or seclusion is effective in reduction of problem behaviors.^{iv} And, restraint and seclusion can be deadly.^v

Vermont Data Demonstrates Disproportionate Use of Restraint and Seclusion on Children with Disabilities

US Department of Education Civil Rights data shows that the vast majority of restraints and seclusions in Vermont are conducted on students with disabilities^{vi}:

- Mechanical Restraint: 6 reported mechanical restraints (prohibited by Rule 4500), 5 were students on IEPs; 83.33%
- Physical Restraint: 464 reported physical restraints, 330 were students on IEPs (71.1%), and 34 were students on 504 plans (7.3%) ; total 78.4%
- Seclusion: 208 reported seclusions, 134 were students on IEPs (64.4%), 20 were students on 504 plans (9.6%); total 74%

Alternatives to Restraint and Seclusion

Given the lack of evidence to support these practices, and the serious risk of harm, our recommendation is that H. 409 be amended to fully prohibit all forms of restraint and seclusion.

We believe this can be accomplished by instead improving investments in MTSS and PBIS (Positive Behavior Interventions and Supports), training and coaching for creating trauma-informed schools, and providing comprehensive school-based mental health services and special education and related services to meet the needs of Vermont children. This means that we create settings that support students and prevent students from reaching a point of dysregulation where our children are an imminent risk of serious bodily harm to themselves, or to others.

H. 409 does not accomplish this, and, in our view, would not alter the current landscape of restraint and seclusion in Vermont.

If you look at the side-by-side we prepared of H. 409 and the existing Rule 4500 requirements, you will see that nothing in H. 409 extends beyond Rule 4500, and most of this proposal is less comprehensive than H. 409.

For example:

- 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

The only difference we see that would be a step forward is that it adds seclusion to mechanical and chemical restraint as being fully prohibited. I do support that change.

Ongoing use of prone restraint

Use of restraint and seclusion beyond the bounds permitted in Rule 4500

Excessive use of restraint and seclusion

Inadequate Data Collection

Another shortcoming in H. 409 is that it does not address the serious shortcomings in AOE data collection on restraint and seclusion.

The current requirements are:

- (1) Report to School Administrator: By the end of the school day
- (2) Report to Parents: Document attempt to provide verbal or electronic use by end of school day, and written notice within 24 hours
- (3) Report to Superintendent within 3 school days if:
 - a. Death, injury, or hospitalization of staff or student results
 - b. Adult has used R&S three or more times
 - c. Physical restraint was more than 15 minutes long
 - d. Student R&S 3+ times in the school year
 - e. Student R&S +1 time in school day
 - f. Student not already on BIP
 - g. R&S used in violation of the rules
- (4) Report to AOE Secretary within 3 school days if:
 - a. Death, injury requiring outside medical treatment or hospitalization results
 - b. R&S used +30 minutes
 - c. R&S used in violation of the rules

There is no state level data collection that allows us to understand on a monthly or annual basis the frequency of the use of these practices. Data submitted to the U.S. Department of Education has a significant lag – the most recently available data is from 2017-18.

I recommend H. 409 be amended to require that the AOE must receive and review a copy of every Rule 4500 report within 24 hours of the event, as well as documentation of the completion of a debrief and scheduling of an IEP or 504 team meeting to assess the need to amend the IEP or 504 plan to prevent further use of restraint and seclusion.

I also recommend that the legislature require the AOE to keep a database and add to the Dashboard, annual data regarding of all uses of Restraint and Seclusion so that data can be analyzed by disability status, age, gender, race, and eligibility for free or reduced lunch at the school and district or SU level.

No Meaningful Complaint and Investigation Process

Currently Rule 4500 only provides for complaints to be completed by the school where the student attends, the school has 30 days to investigate itself and make written findings, and unresolved complaints can only be directed to the superintendent.

While the rule allows the use of dispute resolution options available under the IDEA, the Vermont AOE has been inconsistent in its willingness to investigate improper use of restraint and seclusion through the State Complaint process, in some cases fully declining to do so, and referring the complaint to other agency staff, who, to our knowledge, did nothing with those complaints.

We recommend that you amend H. 409 so that complaints of Rule 4500 be investigated by independent reviewers, and that these reviewers be empowered to order specific corrective action for schools including additional training, technical assistance, and monitoring, as well as to provide remedies for the child and family impacted, such as an apology, repair through restorative practices, and compensatory education.

Inadequate training and oversight of the use of restraint and seclusion by the Agency of Education

Common Ground

If these practices are not going to be fully prohibited, I would suggest the following additional in actually expanding protection for students against these dangerous practices:

- (1) Fully ban prone restraints. This will require removing the “Handle with Care” program from approved programs districts can choose for restraint and seclusion training
- (2) Significantly expand data collection and analysis and create a Training and Data Council on Restraint and Seclusion that is empowered to contract with data analysts with expertise in equity-driven data analysis to understand the impact of current practices on Vermont students.
- (3) Fund re-training on de-escalation techniques especially for districts and designated agency staff that have been using Handle with Care.
- (4) Create a summer study committee to assess what additional regulatory changes are needed to Rule 4500 or whether further statutory changes are needed that are not included in H. 409.

I have discussed these recommendations with the Vermont Superintendents and Vermont Principals Associations, and these four recommendations are areas of common ground.

ⁱ *Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities* at 11 (December 28, 2016).

ⁱⁱ *Id.* at 17.

ⁱⁱⁱ *Id.* at 23.

^{iv} Restraint and Seclusion: Resource Document, U.S. Dep’t of Education at III (May 2012), *available at* <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.

^v *Id.* at 6-7.

^{vi} *Available at*; <https://ocrdata.ed.gov/estimations/2017-2018>; 2017-18 is most recent available data.