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As recently as 2011, Maine schools were not required to report occurrences of restraint or seclusion. Given understandable concerns across students, parents/guardians, advocates, and others, the Chapter 33 development group was formed and ultimately, after submission to the Joint Standing Committee on Education and Cultural Affairs, “Chapter 33” was enacted in April 2012 (DRM, Ch33 Report, Final, 2017 <https://drme.org/assets/brochures/CH33-Report.FINAL.docx>).

In 2017 Disability Rights Maine (DRM) took on the task of reviewing the first four years of restraint and seclusion data required by the Maine Department of Education (MDOE) Chapter 33 Rule. As noted in their 2017 final report, “many covered entities are not reporting the use of restraint and seclusion, as required by Chapter 33” (pg. 2). The incidence data for Special Purpose Private Schools (SPPS) (which require and provide extensive staff training and support in crisis/physical management as well as comprehensive Positive Behavior Support/Crisis & Safety Plans, often overseen by Board Certified Behavior Analysts (BCBA’s)) were compared with restraint and seclusion incidence data for the subset of public schools that did report. This is problematic for several reasons.

1. SPPS’ exist to provide services to those students whose home school/district has determined that services cannot be appropriately provided in a less restrictive setting.
2. The SPPS student population is inherently distinct from the typical student population found in a public school environment. Some students referred to SPPS’ present with learning histories that include dangerous behaviors, such as the use of aggression to communicate wants and needs. The incidence of Restraint & Seclusion in SPPS settings is of course going to be higher than in a public school that is sending their highest need students to SPPS’.

a. Let us be clear, at the Margaret Murphy Centers for Children (MMCC) we strictly adhere to the requirements laid out in Chapter 33 and provide high quality, evidence-based services to students with a variety of learning and behavioral needs. We report all occurrences of restraint and seclusion whether they last for three seconds or more than one minute (underscoring an additional issue that the reporting behavior of SPPS’ may be higher than public schools thus exacerbating the incidence disparities noted in the DRM report).

b. In parallel to the DRM’s thought experiments in their 2017 “Final report” let us ponder what a SPPS educator is supposed to do when a recently referred seventeen-year-old at over six feet tall who has effectively used adult-directed aggression in other settings, for more than a decade, to gain access to preferred items and/or to avoid engaging in nonpreferred (e.g. skill-building) tasks becomes agitated and aggressive. We have been in this, or similar situations many times and I can tell you that while none of us want any student to be restrained or secluded - in this situation, restraint and/or seclusion may both be necessary tools as part of a comprehensive treatment package given the risk of serious harm.

We, at the MMCC, also support students who engage in dangerous self-injurious behavior and believe that in addition to advocating for the rights of students to not be unnecessarily restrained or secluded, we must also advocate for the students that engage in dangerous self-injury that require restraint when functionally indicated, to not experience potential life-long complications.

Returning to the 2017 report, the DRM authors additionally noted that “drawing conclusions from this data, however, is problematic,” as “the available data is incomplete and unreliable, and cannot be used to identify trends or draw conclusions,” (pg. 5). A recommendation was made for the MDOE to “convene a stakeholders group to examine the high rate of use of seclusion and restraint with students with disabilities and to develop a plan to reduce reliance on these emergency interventions” (pg. 13).

Following the 2017 report and a renewed DRM call to action, Representative Farnsworth proposed LD 1376: An Act To Direct the Department of Education To Amend Its Rules To Ensure That Physical Restraint and Seclusion Policies Are Followed for Special Education Students and Make Biennial Reports on the Use of Physical Restraint and Seclusion which died upon the conclusion of the 129th Legislature, November 16, 2020.

Now in 2021 alone, we have asked schools and educators in Maine to keep up their work amidst a global pandemic, prepare to expand services to children between the ages of 3-5 years old, extend services to eligible adult students (20-22 years of age) accessing special education, bring back students placed out of State, and now to also further restrict the use of safety measures based on a fundamentally flawed set of data.

In the profession of psychology, it is routine to approach problems in educational and treatment settings methodically. The “identify and define the problem” stage is the first step of an effective problem-solving approach. Given that restraint and seclusion data in Maine schools have been clearly documented to be inaccurate and incomplete, it would seem prudent to first allocate concerted effort toward improving the accuracy and frequency of the data to get closer to a complete set. Moving forward without that will significantly increase the likelihood of falsely predicated system shifts that may eventually need to be undone. This constant pendulum swing results in initiative fatigue which school related personnel are all too familiar with. The elimination of unnecessary restraint and seclusion should absolutely remain a top priority during any thoughtful process given that when implemented correctly and only when needed by highly trained staff, such as ours, we do not typically see injuries related to restraint or seclusion for staff or students.

Traumatic histories, less restrictive options, and an individuals’ right to access effective treatment always weigh heavily when making any restraint and/or seclusion determinations. We utilize an interdisciplinary approach, closely monitor data collected in fifteen-minute intervals across every school day, and conduct Functional Behavioral Assessments (FBA’s) to ensure that we are providing the best possible treatment for the students we serve, and we always document and report restraint and seclusion in compliance with Ch. 33. The educational staff working with our clinicians, who are among the most highly trained behavioral scientists in the state of Maine, tirelessly put the needs of our students first. As we begin this, teacher/educator appreciation week, they deserve recognition for the compassion and commitment they bring to their roles each and every day.

Thank you for your consideration of this testimony.

Respectfully,

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