

# RESTRAINT AND SECLUSION IN MAINE SCHOOLS

*REVIEWING THE FIRST SIX YEARS OF DATA  
REQUIRED BY MDOE RULE CHAPTER 33*



*May 2019*

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## INTRODUCTION

In April 2017, Disability Rights Maine (DRM) released “[Restraint and Seclusion in Maine Schools, Reviewing the First Four Years of Data Required by MDOE Rule Chapter 33.](#)”<sup>1</sup> DRM highlighted concerns with these practices and identified issues with the data, concluding: 1) students with disabilities were restrained and secluded at significantly higher rates than students without disabilities; 2) there were serious concerns with the reliability and consistency of the data reported pursuant to Chapter 33; and 3) schools were not fulfilling their obligation to review data quarterly in order to identify ways to reduce the future use of restraint and seclusion.

The release of the 2017 Report resulted in extensive press coverage and a call to action.<sup>2</sup> In reviewing the 2017 Report, the Portland Press Herald’s Editorial Board wrote: “But ineffective techniques are still used too frequently and disproportionately against students with disabilities. *If the past five years have been about assessing the scope of the problem, then the next five should be about getting help where it is needed.*”<sup>3</sup> Specifically, “the state should target help – better programming, more training – to the programs with continued high rates of interventions. Interventions should be reserved for emergencies, and *it’s hard to believe that emergencies have to happen 13,000 times a year.*”<sup>4</sup> Unfortunately, two years later, nothing has changed. In fact, the use of these dangerous interventions continues to rise.

Data released and obtained since 2017 highlights several clear and troubling trends.<sup>5</sup> The use of restraint and seclusion has increased every year since 2014 – from 12,000 to more than 20,000 in 2018. Data remains incomplete because multiple covered entities fail to report every year. Students with disabilities continue to be disproportionately subjected to restraint and seclusion.

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<sup>1</sup> Disability Rights Maine, *Restraint And Seclusion In Maine Schools, Reviewing the First Four Years of Data Required by MDOE Rule Chapter 33*, <https://drme.org/news/2017/chapter-33-report>

<sup>2</sup> Robbie Feinberg, *Report: Maine Schools Restrain, Seclude Students 13,000 Times Per Year*, Maine Public (2017), <https://www.mainepublic.org/post/report-maine-schools-restrain-seclude-students-13000-times-year> (last visited May 7, 2019), Bangor Daily News (2017), <https://bangordailynews.com/2017/04/22/education/report-maine-schools-restrain-seclude-students-13000-times-per-year/> (last visited May 7, 2019); Vivien Leigh, *Report: Majority of students restrained in schools have special needs*, WCSH/News Center Maine (2017), <https://www.newscentermaine.com/article/news/education/report-majority-of-students-restrained-in-schools-have-special-needs/433239349> (last visited May 7, 2019).

<sup>3</sup> The Editorial Board, *Our View: Emergency interventions in schools should be last resort only*, The Portland Press Herald (2017), <https://www.pressherald.com/2017/04/28/our-view-emergency-interventions-in-schools-should-be-last-resort-only/> (last visited May 7, 2019) (emphasis added).

<sup>4</sup> Id. (emphasis added).

<sup>5</sup> U.S. Dept. of Education Office for Civil Rights, Civil Rights Data Collection (CRDC) for the 2015-16 School Year, available at <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-2015-16.html> (last visited May 5, 2019); Maine Dept. of Education, *Restraint and Seclusion*, data for school years ending 2013-2018 partially available via website, see: <https://www.maine.gov/doe/schools/safeschools/restraint> Note: MDOE has chosen not to post private school data for reporting years 2017 and 2018 on its website. DRM obtained private school data through a FOIA request.

And Maine students continue to be restrained and secluded at rates over *four to eleven times the national average*.<sup>6</sup> In addition, many schools continue to fail to make required efforts toward reducing the use of restraint and seclusion. After reviewing six years of data and reflecting on the experiences of DRM's clients, it is clear that Chapter 33 is not working as intended.

DRM provides this update to the 2017 Report in the hope that it will lead to a much needed discussion about how to reduce the use of these dangerous interventions. Maine must do better.

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<sup>6</sup> The degree to which Maine schools utilize restraint and seclusion above the national average varies depending on whether the rate is calculated using the data reported to the Maine Department of Education (MDOE) or the data reported to the United States Department of Education (USDOE). See: Figure B and accompanying text for more information.

## RESTRAINTS AND SECLUSIONS ARE INEFFECTIVE AND DANGEROUS

Restraints and seclusions are not effective. According to the USDOE, “[t]here is no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques.”<sup>7</sup> Similarly, the Senate Committee on Health, Education, Labor, and Pensions (HELP) recently investigated the use of restraint and seclusion in schools and concluded that “[t]here is no evidence that physically restraining or putting children in unsupervised seclusion in the K-12 school system provides any therapeutic benefit to a child.”<sup>8</sup> And the USDOE has expressed that the “foundation of any discussion about the use of restraint and seclusion is that every effort should be made to structure environments and provide supports so that restraint and seclusion are unnecessary.”<sup>9</sup>

These interventions, which have no demonstrable therapeutic or educational benefit, are also potentially dangerous and harmful. According to the federal Substance Abuse and Mental Health Services Administration (SAMHSA), “studies have shown that the use of seclusion and restraint can result in psychological harm, physical injuries, and death to both the people subjected to and the staff applying these techniques.”<sup>10</sup> In 2009, the Government Accountability Office reported at least 20 student deaths and hundreds of cases of abuse resulting from restraints in school from 1992 to 2009.<sup>11</sup> The State of Georgia banned seclusion in school in 2010 after a student tragically took their life while confined to a seclusion room.<sup>12 13</sup> And, just this school year in California, a 13 year-old student with autism died after being physically restrained.<sup>14</sup> For individuals with a history of trauma, the use of physical restraints can be particularly

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<sup>7</sup> U.S. Department of Education, *Restraint and Seclusion: Resource Document*, Washington D.C., 2012, available at: <https://www2.ed.gov/policy/seclusion/restraint-and-seclusion-resource-document.html>

<sup>8</sup> Majority Committee Staff, U.S. Senate Health, Education, Labor, and Pensions Committee, *Dangerous Use of Seclusion and Restraints in Schools Remains Widespread and Difficult to Remedy: A Review of Ten Cases* (Feb. 12, 2014), available at <http://www.help.senate.gov/imo/media/doc/Seclusion%20and%20Restraints%20Final%20Report.pdf>

<sup>9</sup> U.S. Department of Education, *Restraint and Seclusion: Resource Document*, Washington D.C., 2012, available at: <https://www2.ed.gov/policy/seclusion/restraint-and-seclusion-resource-document.html>

<sup>10</sup> National Center for Trauma-Informed Care and Alternatives to Seclusion and Restraint (last updated Feb., 11, 2019), available at <https://www.samhsa.gov/trauma-violence/seclusion>

<sup>11</sup> *SECLUSIONS AND RESTRAINTS, Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers* (2009) (testimony of United States Government Accountability Office Before the Committee on Education and Labor, House of Representatives), available at: <https://www.gao.gov/new.items/d09719t.pdf>

<sup>12</sup> Georgia Dept. of Education, State Board of Education, Rule 160-5-1-.35 SECLUSION AND RESTRAINT FOR ALL STUDENTS, <https://www.gadoe.org/External-Affairs-and-Policy/State-Board-of-Education/SBOE%20Rules/160-5-1-.35.pdf>

<sup>13</sup> Ashley Fantz, *Children forced into cell-like school seclusion rooms*, CNN (2008), <http://www.cnn.com/2008/US/12/17/seclusion.rooms/> (last visited May 5, 2019).

<sup>14</sup> Cat Schuknecht, *School Where Student With Autism Died Violated State Regulations, Officials Say*, NPR News (2018), <https://www.npr.org/2018/12/09/675145052/school-where-student-with-autism-died-violated-state-regulations-officials-say> (last visited May 5, 2019).

harmful.<sup>15</sup> School staff are at risk of injury as well, and an average of over 55 Maine school staff per year experienced bodily injury as a result of administering a restraint or seclusion.<sup>16</sup>

The recognition that the use of seclusion and restraint can lead to physical and psychological injury, coupled with the lack of evidence that these interventions are effective at reducing difficult behaviors, has caused states to begin to look more critically at the use of these interventions in schools. Maine took this step with Chapter 33.<sup>17</sup>

Chapter 33 is generally aligned with the recommendations from the USDOE and other entities that have addressed the use of restraint and seclusion in schools.<sup>18</sup> Chapter 33 recognizes that restraint and seclusion do not have any therapeutic or educational benefit and are only properly understood as emergency interventions when there is a risk of injury or harm. Accordingly, Chapter 33 prioritizes the use of behavior intervention and strategies to proactively address problem behaviors through skill building and environmental modifications in order to avoid situations where physical intervention may become necessary.

Chapter 33 incorporates detailed documentation and reporting requirements to ensure that parents are notified of the use of these emergency interventions, as well as debriefing requirements designed to ensure that steps are taken to reduce the need for emergency intervention in the future. In order to achieve these goals, Chapter 33 requires schools to look at aggregate data quarterly in order to identify areas where they could reduce the use of future emergency interventions.

But the implementation of Chapter 33 has fallen far short of these goals. Since the 2017 Report, DRM has continued to receive reports of repeated and excessive restraints and seclusions. For example, a 7 year-old was restrained 34 times in the span of 42 school days. And an 11 year-old was restrained and secluded 91 times over the course of a school year, including a total of 25 hours spent in seclusion (which is almost a week of school). DRM has received reports of

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<sup>15</sup> National Center for Trauma-Informed Care and Alternatives to Seclusion and Restraint (last updated Feb., 11, 2019), available at <https://www.samhsa.gov/trauma-violence/seclusion>

<sup>16</sup> Data sources: MDOE, <https://www.maine.gov/doe/schools/safeschools/restraint>; USDOE, <https://www2.ed.gov/about/offices/list/ocr/data.html> and <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-2015-16.html>; DRM FOAA requests to MDOE and school districts.

<sup>17</sup> See: 05-071 C.M.R. Ch. 33 (“Chapter 33”), available at <https://www.maine.gov/sos/cec/rules/05/071/071c033.doc>; See also: Disability Rights Maine, *Restraint And Seclusion In Maine Schools, Reviewing the First Four Years of Data Required by MDOE Rule Chapter 33*, <https://drme.org/news/2017/chapter-33-report> (page 1 includes information on MDOE’s ‘Consensus Based Rulemaking Team’ and ‘Rule Chapter 33 Review and Revision Project’).

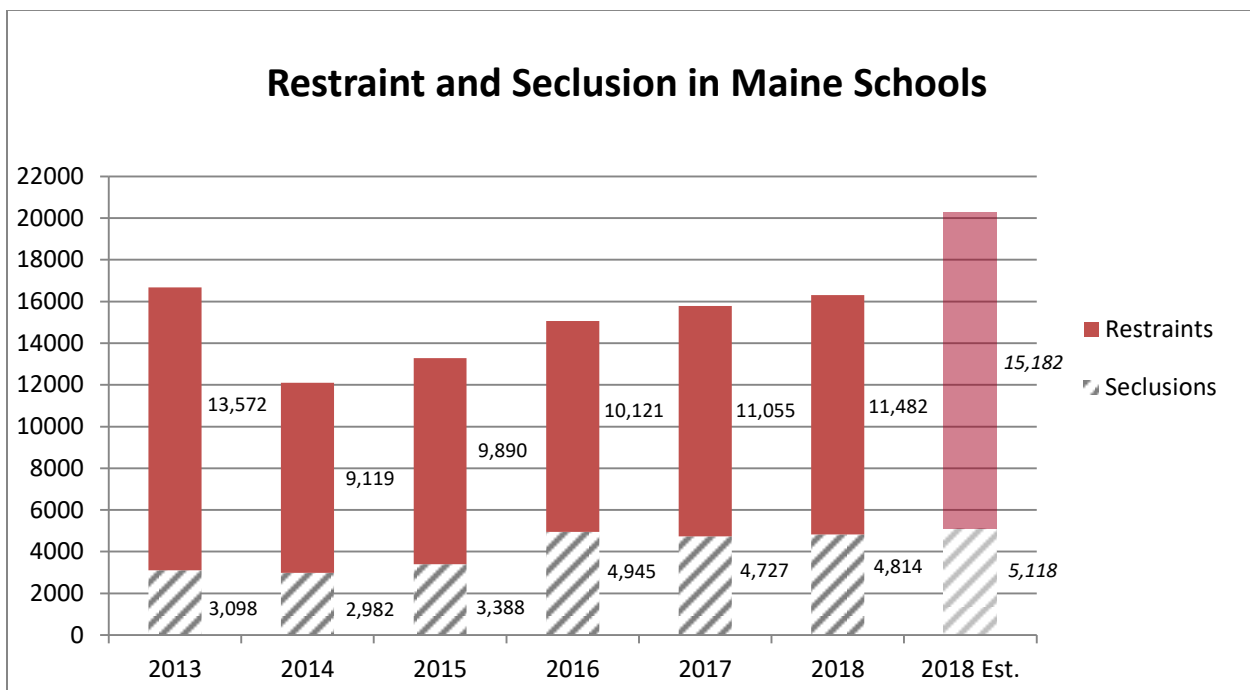
<sup>18</sup> To be clear, DRM believes that there are problems with Chapter 33. For example, it is DRM’s position that seclusion should be a prohibited practice in all educational and therapeutic settings. Additional recommendations are included at the end of this Report.



children becoming so distressed when placed in seclusion that they take off their clothes, bang their head on the wall, or urinate on the floor. Every school day in Maine, children are restrained and secluded, resulting in a denial of access to education for all involved, additional psychological trauma for many, and physical injury for some.

## THE USE OF RESTRAINT AND SECLUSION CONTINUES TO RISE

Figure A <sup>19</sup>



After an initial drop to 12,000 in 2014, the number of restraints and seclusions in Maine has increased every year.<sup>20</sup> In the 2017-2018 school year, Maine schools reported over 16,000

<sup>19</sup> Data sources: MDOE, <https://www.maine.gov/doe/schools/safeschools/restraint>; USDOE, <https://www2.ed.gov/about/offices/list/ocr/data.html> and <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-2015-16.html>; FOAA requests made by DRM to MDOE and school districts.

<sup>20</sup> DRM compiled a comprehensive data set using: a) publically-posted data from MDOE's Chapter 33 data collection, available at: <https://www.maine.gov/doe/schools/safeschools/restraint> (this dataset was updated by MDOE since we first accessed in it 2017 for our original report); and b) FOAA requests to both MDOE and school districts (DRM obtained and included data from a public day treatment program in this report that was not included in the 2017 Report).

restraints. But based on additional data obtained by DRM, the actual number almost certainly exceeds 20,000.<sup>21</sup> Unfortunately, even this estimate likely understates the problem.

Since Chapter 33 was enacted, there has not been a single year when all of the approximately 250 covered entities reported as required. Notably, for reporting years 2017 and 2018, MDOE did not publically-post data collected from private schools, including special purpose private schools where over half of all restraints and seclusions take place.<sup>22</sup> And finally, DRM continues to see examples of underreporting within individual client files.<sup>23</sup>

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<sup>21</sup> Five covered entities who have consistently reported high numbers of seclusion and restraint failed to report anything to MDOE in 2018, so DRM averaged all previously reported data for those entities to create an estimated number for 2018 (shown in Figure A as “2018 Est.”).

<sup>22</sup> DRM obtained the private school data through a FOAA request to MDOE.

<sup>23</sup> For example, schools often try and categorize physical management as an escort, even if it is clearly a restraint. Some schools have told staff to use their foot to keep the door slightly ajar when they are secluding a student, maintaining that somehow this is not seclusion. And other schools have purported to avoid reporting seclusion by replacing doors with staff, where the staff will physically block exit from a room and/or restrain a student who tries to move past them out of the room where they are secluded. All of these practices likely result in potentially significant underreporting of these emergency interventions. However, it is also possible that some incidents may be counted twice in the MDOE data because some private schools will report back to the sending school and both entities may report those numbers. On balance, it is much more likely than not that the use of restraints and seclusions is underreported.

## MAINE SCHOOLS USE RESTRAINT AND SECLUSION MANY TIMES THE NATIONAL RATE

Maine continues to restrain and seclude students at rates significantly above the national average. Since USDOE data is collected biennially, we now have two years that overlap the MDOE data: 2014 and 2016.<sup>24</sup> In 2014, using MDOE data supplemented with additional data obtained through FOAA requests, Maine’s rate was 61.80 restraints and seclusions per 1,000 students versus the national rate of 5.36. And in 2016, using the same data, Maine’s rate was 77.66 restraints and seclusions per 1,000 students while the national rate was 6.72. Therefore, in both years, Maine used restraint and seclusion at more than 11 times the national rate. Even when using the underreported USDOE data, Maine students were restrained and secluded at a rate over 4 times the national average in both 2014 and 2016.

**Figure B** <sup>25</sup>

<b>Year</b>	<b>Area</b>	<b>Source</b>	<b>Total Students</b>	<b>Total Restraints and Seclusions Used</b>	<b>Rate per 1000 students</b>	<b>Maine v. National (factor)</b>
2014	Maine	MDOE, FOAA	195,761	12,101	61.80	<b>11.54</b>
2014	Maine	USDOE	175,355	3,972	22.65	<b>4.23</b>
2014	National	USDOE	50,035,746	268,019	5.36	-
2016	Maine	MDOE, FOAA	196,224	15,238	77.66	<b>11.56</b>
2016	Maine	USDOE	178,460	5,642	31.61	<b>4.70</b>
2016	National	USDOE	50,574,476	339,846	6.72	-

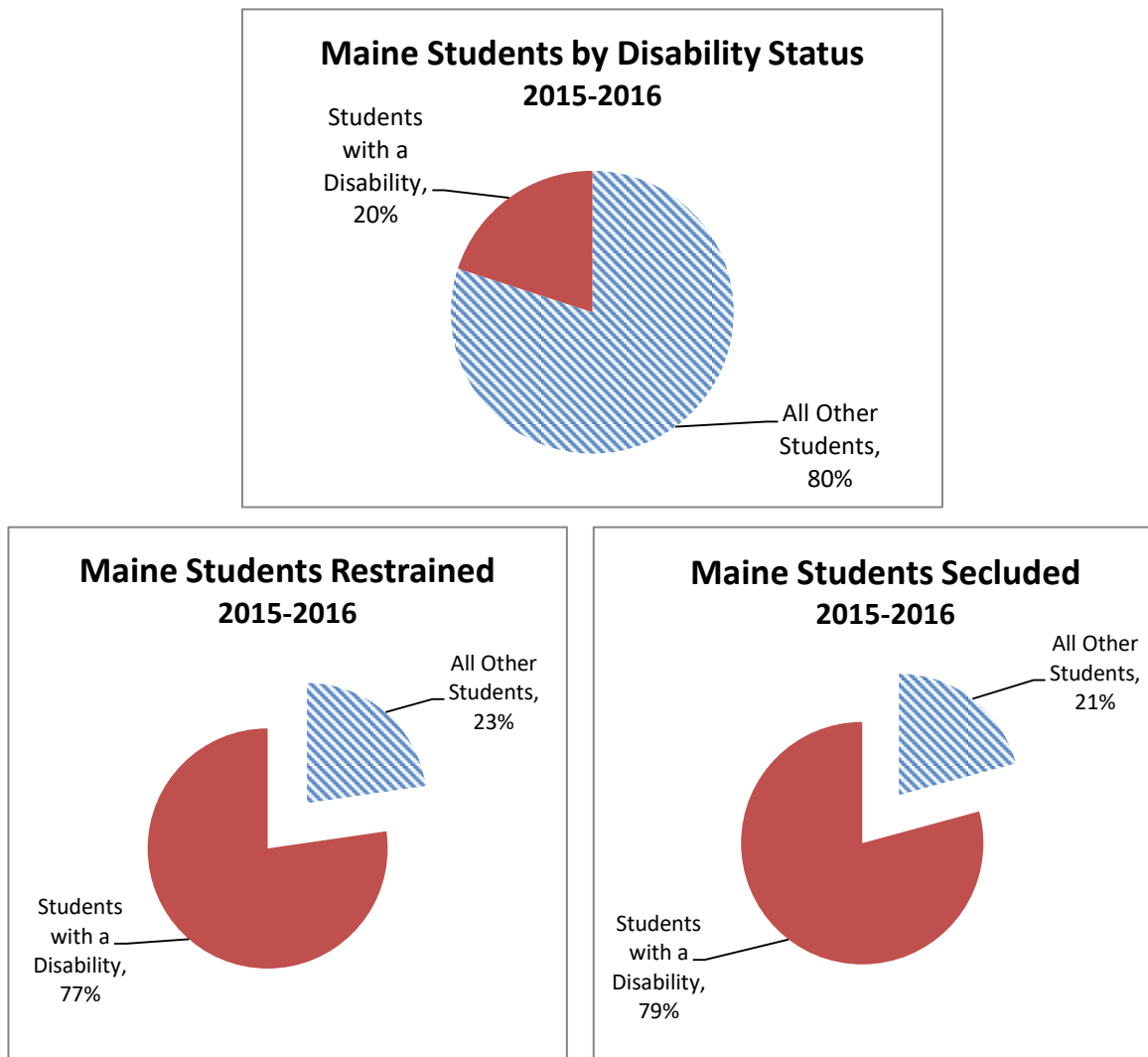
<sup>24</sup> There is generally a lag between when the USDOE data collection occurs and when it is released. So the 2018 data is not expected to be released until 2020.

<sup>25</sup> For more conservative data, DRM used the student enrollment from the MDOE Data Warehouse instead of the student population reported through Chapter 33, available at: <https://www.maine.gov/doe/data-reporting/reporting/warehouse/student-enrollment-data>

## STUDENTS WITH DISABILITIES ARE SUBJECTED TO THE MAJORITY OF RESTRAINTS AND SECLUSIONS

According to the most recent data collected by the USDOE from Maine public schools, 79% of students secluded and 77% of students restrained were identified as having a disability.<sup>26</sup> Considering that students with disabilities are approximately 20% of Maine’s total student population, this disparity is significant.<sup>27</sup> See Figures C-E.

Figures C-E<sup>28</sup>



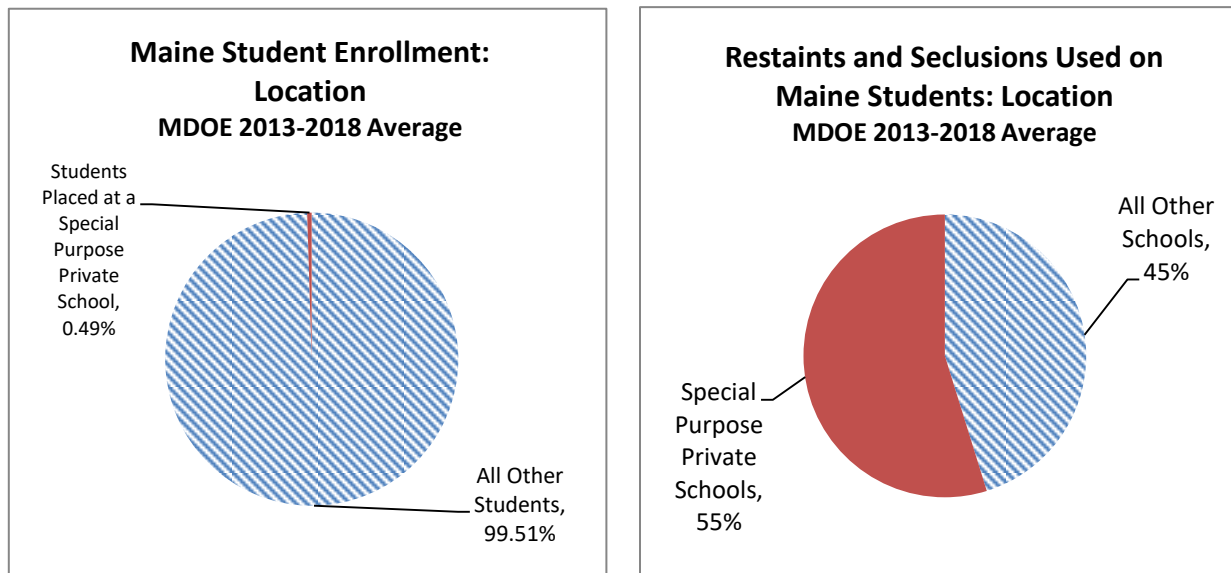
<sup>26</sup> U.S. Dept. of Education Office for Civil Rights, Civil Rights Data Collection (CRDC) for the 2015-16 School Year, available at <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-2015-16.html> (last visited May 5, 2019).

<sup>27</sup> Id.

<sup>28</sup> Id.

Chapter 33 data is not broken down by disability status, so we do not know the full extent of the disparity in the MDOE data.<sup>29</sup> However, because special purpose private schools only serve students with disabilities, an examination of the use of restraint and seclusion in these schools provides some information about the extent to which students with disabilities are disproportionately impacted. An average of approximately 900 students with disabilities are placed at special purpose private schools each year by their public schools. These 900 students endure an average of 8,000 restraints and seclusions each year – or, over 50% of all restraints and seclusions for the entire state. *See* Figures F&G.

**Figures F&G**



Given the significantly disproportionate use of seclusion and restraint in schools that only serve students with disabilities, DRM was troubled to recently learn, through a FOAA request, that in September 2018, MDOE began to take the position that private schools did not need to report to MDOE pursuant to Chapter 33.<sup>30</sup> MDOE should take any and all steps necessary to resolve any questions about its authority to enforce Chapter 33 with regard to private schools and, if

<sup>29</sup> In our 2017 Report, DRM recommended Chapter 33 be amended to require data be disaggregated by disability – the 2017 and additional recommendations are included at the end of this Report.

<sup>30</sup> In reviewing the emails received pursuant to the data request, it appears MDOE determined, in or about September 2018, that private schools, including special purpose private schools, are “not required to do Ch. 33” because “there is a serious question as to whether including the private schools [in Chapter 33] exceeded the Department’s rulemaking authority.” There was no notice about this decision to the public. But MDOE did stop publishing private school data it received under Chapter 33 on its website.

additional authority is needed, MDOE should seek to have emergency legislation submitted and heard to address this issue.<sup>31</sup>

In January 2019, USDOE launched an initiative ‘to address the inappropriate use of restraint and seclusion to protect children with disabilities.’<sup>32</sup> The initiative includes compliance reviews, data quality reviews, and technical assistance aimed at addressing the use of restraint and seclusion on students with disabilities.<sup>33</sup> A similar effort is clearly needed at the state level.

## CONCLUSION

DRM participated in the consensus based group that developed Chapter 33. There was a shared belief among participants that Chapter 33 would lead to a reduction in the use of restraint and seclusion. This has not happened. There were at least 20,000 uses of restraint and seclusion during the 2017-2018 school year. This equates to an incident of restraint or seclusion approximately every five minutes that school is in session. Maine continues to restrain and seclude students at rates that far exceed the national average. Students with disabilities continue to be subjected to restraint and seclusion at rates far greater than their peers. And a majority of the restraints and seclusions in Maine take place in special purpose private schools that only serve children with disabilities. None of this is acceptable.

At this point, Chapter 33 can only be seen as a failure. Bold action is required to ensure that we have done more than simply normalize violence against children. Each and every use of restraint or seclusion should be treated like a true emergency. Because the use of restraint or seclusion is a signal that something is not working for that child, for that teacher, or in that school. Schools and teachers must be given the resources they need to meet the needs of all students without the need for continued reliance on these dangerous and ineffective practices. Maine must do better.

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<sup>31</sup> Whether or not MDOE properly included private schools in the definition of covered entity in Chapter 33, students placed in special purpose private schools are still entitled to the full protections of Chapter 33. See: Chapter 33, Sec. 3(2) (“Contracts with non-covered entities: The Department of Education and any covered entity that places or funds the placement of a student in an educational program owned, operated or controlled by an entity other than a covered entity must include in the contract with that other entity a requirement that the entity and its employees, contractors, and agents comply with the rule while the student is engaged in the educational program”).

<sup>32</sup> U.S. Dept. of Education, Press Release, <https://www.ed.gov/news/press-releases/us-department-education-announces-initiative-address-inappropriate-use-restraint-and-seclusion-protect-children-disabilities-ensure-compliance-federal-laws> (last visited May 5, 2019).

<sup>33</sup> *Id.*

## 2019 RECOMMENDATIONS

In addition to the recommendations included in the 2017 Report, which remain relevant and are included below, DRM makes the following additional recommendations:

- 1) Maine should ban the use of seclusion. Seclusion is already prohibited in residential treatment settings in Maine.<sup>34</sup> And a ban on seclusion would be consistent with proposed federal legislation, the Keeping All Students Safe Act.<sup>35</sup>
- 2) Restraint should be prohibited if contraindicated based on a student's disability, health care needs, or medical or psychiatric condition, or if it would interfere with the student's ability to communicate in the student's primary mode of communication, as documented in an individualized health care plan, behavior intervention plan, individualized education program, or other relevant record made available to the school.<sup>36</sup>
- 3) Restraint is an emergency intervention and Maine should ensure that it is treated as such. This could be done by:
  - a. Limiting the use of restraint to situations where a student's behavior poses an imminent danger of serious physical injury to the student or others;
  - b. Requiring a meeting between the school and the parent not later than 5 school days following each and every incident of physical restraint;<sup>37</sup> and
  - c. Requiring that a student be examined by the school nurse or other medical professional following each and every use of physical restraint.
- 4) Maine must ensure that all children in educational programs that are either funded by or approved or licensed by the Maine Department of Education are subject to and comply

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<sup>34</sup> Children's Residential Care Facilities Licensing Rule, 10-144 CMR Ch. 36 Sec. 5(O)(4) ("Seclusion. The facility must not permit the seclusion of a resident in a locked space. The resident may not be confined alone to any area with the door locked, barred or held shut by staff. Seclusion is prohibited in children's residential care facilities except for Level 2 facilities. Level 2 facilities are considered inpatient psychiatric facilities for people under the age of 21 for the purposes of the Rights of Recipients of Mental Health Services Who Are Children in Need of Treatment (14-472 CMR Ch. 1) and federal regulation").

<sup>35</sup> See: HR 7124 IH, Sec. 5(a)(2)(A) (listing seclusion as a prohibited action), available at <https://www.congress.gov/bill/115th-congress/house-bill/7124/text>. There is also a companion bill in the senate, S.3626 - Keeping All Students Safe Act, available at: <https://www.congress.gov/bill/115th-congress/senate-bill/3626/text>

<sup>36</sup> This limitation would also be consistent with proposed federal legislation. See: HR 7124 IH, Sec. 5(a)(2)(E) and Sec. 5(a)(3)(F).

<sup>37</sup> This would also be consistent with proposed federal legislation. See: HR 7124 IH, Sec. 5(a)(6)(B). Chapter 33 currently requires a debriefing meeting after each use of seclusion, but parent involvement is optional and, in DRM's experience, parents are not typically invited. And the meetings, if they occur, rarely result in the development and implementation or revision of a response and de-escalation plan, as required by Chapter 33.

with all requirements related to the use of emergency interventions in schools. If MDOE in fact needs additional statutory authority to ensure that private schools are subject to the same rules and regulations regarding seclusion and restraint as public school programs, it should request this authority.

## **2017 RECOMMENDATIONS**

- 1) MDOE should continue its efforts to ensure that 100% of all covered entities submit annual data as required by Chapter 33 and that there are uniform standards for reporting so comparisons can be made between covered entities. Related to this, MDOE should ensure that students placed in special purpose private schools are represented in the federal reporting to OCR because current reporting to OCR appears inadequate.
- 2) MDOE should ensure that schools across the state are provided support in adopting positive behavioral interventions and supports and in taking other steps aimed at reducing the need for the use of emergency interventions. And MDOE should provide targeted and intensive support to schools and programs with high rates of seclusion and restraint to ensure that appropriate efforts are taken to reduce reliance on emergency interventions.
- 3) All covered entities should review building-level data quarterly and develop plans to reduce the use of emergency interventions, as required by Chapter 33.
- 4) MDOE should consider exercising its existing authority pursuant to Chapter 33 to request quarterly building-level data from entities with high rates of seclusion and restraint in order to better target professional development and other state level resources.
- 5) To facilitate access and analysis, MDOE should add restraint and seclusion data to MDOE's "Data Warehouse," alongside the numbers for discipline, enrollment, program enrollment, special education, and student attendance.
- 6) Given the significantly disparate rates of seclusion and restraint for students with disabilities, Chapter 33 should be amended to require that the quarterly data and the annual data be disaggregated for disability status (whether the student has an IEP or a 504 plan). This is already a requirement for the Chapter 33 incident reports. And it is already required for federal reporting. Additional categories, including gender and grade level, should also be included. These are also already required for Chapter 33 incident reports and for federal reporting.
- 7) MDOE should 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.