

ISOLATED

How School Seclusion Rooms Became Accepted Practice Outside The Law

December 2024

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Introduction

The following report is a review undertaken by the Advocate's Office on the use of seclusion practices in schools. Throughout the review process, staff at the Department of Education and Early Childhood Development have been professionally responsive and have provided important and useful input.

The recommendations included in this report are provided to encourage the continual improvement of educational services, and in furtherance of the Advocate's statutory mandate to ensure the rights and interests of children and youth in the Province.

Seclusion rooms, also known as "time-out rooms" or "isolation rooms", are a feature in many schools in the Province. The Anglophone branch of the Department of Education and Early Childhood Development uses the following definition:

"Seclusion involves placing an individual alone in a room or area from which the individual is physically prevented from leaving."¹

This definition should cause all of us to pause and reflect on its ramifications, in terms of child development, student learning, and the law. We begin this report with a consideration of the law.

¹ New Brunswick Department of Education & Early Childhood Development - Education Support Services, Ensuring Student and Staff Safety: Guidelines for Restraint and Seclusion Procedures in Schools, October 2017, page 10.

The Fundamental Problem: Sweeping State Power, Minimal Regulation

It is important at the outset to be clear about what use of a seclusion room is in a legal context. Schools are, after all, instruments of the state. They are important ones, generally caring ones, and so it seems odd to think of them like that. However, a school most certainly is a government institution, and educators use state authority when they exercise power over students.

Therefore, when a school uses a seclusion room, there is no way to avoid the fact that this is a case of the state restricting the movement of an individual. That does not necessarily make it illegitimate – there are a number of examples of the state legitimately restraining the liberty of citizens – but it does make it significant. If we reflect upon the circumstance through this lens, we recognize that there is a broadly accepted principle that when the state uses its power to restrain the movements of the citizen there must be careful regulation. A corollary to that principle is that there must be attention paid to defining the power, circumscribing the limits of the power, and detailing the circumstances in which the power may be legitimately exercised.

In the case of seclusion rooms in New Brunswick schools, there is a surprising absence of legal authority, clarity, and regulation. Were we to scour the Education Act for the source of the authority to restrain students, we would be hard-pressed to find exactly where this authority resides. The Education Act does not explicitly mention restraint or seclusion rooms. While one would assume that the Department of Education and Early Childhood Development is relying upon broad categories of policymaking authority such as the health and well-being of students, it is nonetheless jarring to see such astounding power barely recognized or regulated at law. This leads to the question: is there any other group other than children in school, who is subject to detention and loss of liberty without clear statutory authority and regulation governing that process?

Adults who may pose a threat to public safety or themselves can only have their liberty restrained through the clear and extensive statutory provisions of the Mental Health Act. Adults who break laws can be detained, but numerous statutes are involved, requiring the state to be absolutely clear as to the reasons, the process being used, and compliance with procedural protections such as immediate hearings and review by figures with broad authority for oversight. Were the state to restrain an adult, even temporarily, without acting upon clear and explicit statutory authority, it would most certainly be seen as a clear deviation from the norms of a constitutional democracy founded upon individual rights and the rule of law. We recently saw the intense debate, consideration, and scrutiny provided when government was considering asking the Legislative Assembly for the authority to detain citizens whose mental health or addiction issues created concern. That heightened awareness and public accountability was appropriate. It is striking that the restraint and detention of schoolchildren was allowed to evolve organically and without any of that legislative consideration and oversight.

Yet, when it comes to the restraint and detention of schoolchildren by the state, the attitude towards defining exactly what may be done and in what circumstances become surprisingly cavalier. The power appears to have evolved through a process of officials having to respond to a number of genuinely difficult circumstances, and these responses gradually becoming an accepted norm, without any apparent recognition and legal consideration of what is happening. This is not to be critical of educators, who are often dealing with escalated situations and a paucity of resources. In fact, educators deserve the clarity of properly drafted legal authority and processes to know that they are on unsafe grounds when exercising the authority to restrain students.

There are reasons why adults demand careful regulation of any state power to restrain or detain them. Having our freedom of movement taken away is inherently traumatic. Most of us would say that it runs counter to our sense of freedom and humanity to be told we cannot move as we wish. While many situations require us to voluntarily accept rules in order to participate in activities, having the government tell us that we simply cannot move our bodies as we desire generates strong feelings in adults. There is no reason to believe this would be less so for children. The fact that it may be necessary does not make it any less jarring and traumatic for a child on the receiving end.

We also know, through experience, that powers of restraint and detention can disproportionately affect members of marginalized groups when authority is undefined and unchecked. Members of minority groups can find that they are more likely to be subject to restraint or detention, whether it is in the context of police powers, mental health treatment, or school discipline. Significant progress has been made in defining and overseeing restraint powers in ways that allow unconscious biases to be spotted and corrected in many legal areas. The safeguards that have rightly become commonplace in other situations are not present when it comes to restraint and seclusion in New Brunswick schools.

If we would not accept a seemingly arbitrary, unregulated approach to having our own liberty restricted, there is no reason that we should accept it for our children. It is trite but important to point out that all people in this country, including minors, have rights under the Canadian Charter of Rights and Freedoms.² If seclusion rooms are to become an accepted practice within the New Brunswick education system, then government should do what it would do any time it asks for the power to physically restrain a citizen or detain them within an enclosed room. It should place that authority clearly within the statute and ensure that authority is regulated as thoroughly and thoughtfully as it would be in any other situation where an individual is to be restrained.

² The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11, <<https://canlii.ca/t/ldsx>> See specifically sections 7, 9 and 15: S. 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice; S. 9. Everyone has the right not to be arbitrarily detained or imprisoned; S. 15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

While we will carefully review the policy merits and demerits of seclusion rooms in this report, it should be said at the outset that government has an immediate and important job to do in codifying the process. This power is significant and intrusive, and any state use of measures this intrusive against any citizen should be regulated by statute and subject to nothing less than a full legislative debate and scrutiny. We would not accept a similar situation to exist for any adult citizen without such scrutiny. There is no reason to accept it for children.

The Current Context In Schools

Such rooms are used in schools in some other jurisdictions nationally and internationally. Seclusion rooms are small, often windowless, rooms located within individual classrooms, resource rooms, or elsewhere on school grounds. The general intended purpose of seclusion rooms is to provide a safe and calm environment for students who are feeling overwhelmed or dysregulated in the classroom. However, the use of seclusion rooms is controversial, with some arguing that they can provide a necessary intervention for addressing challenging behaviours, and others raising concerns about the potential harm inflicted on students' psychological well-being and the lack of evidence supporting their effectiveness.

It is important to note that there is an issue in New Brunswick schools in regard to the conflation of seclusion rooms with rooms that are not intended to ensure student and staff safety (which is the purpose of seclusion rooms), but instead are intended to provide an environment for accommodation of various needs including lessening of overwhelming sensory stimuli, regulation of emotions, enhancement of engagement, and occupational therapy supports (which is the purpose of “sensory rooms”, “quiet rooms” or “calm rooms”). The Department’s seclusion procedures Guidelines have clear directions about the need for seclusion rooms to be free of the potentially dangerous furniture and equipment found in “quiet rooms”. This review by the Advocate does not take on this issue of conflation of the two kinds of rooms, other than to state that any use of “sensory rooms” with “seclusion rooms” is obviously inappropriate given that the seclusion Guidelines clearly establish the distinct purposes, setting, and structure and security aspects of seclusion rooms.

Proponents of seclusion rooms argue that they provide educators with a necessary tool for managing behaviours that pose a risk to student safety. These proponents assert that seclusion can prevent physical harm to the student or others and give students an opportunity to calm down and regain control of their emotions. Additionally, proponents argue that seclusion rooms can be an essential component of a comprehensive behaviour management plan, particularly for students with special needs who may require additional support.

However, opponents of seclusion rooms raise significant concerns about the potential harm inflicted on students subjected to this practice.³ Critics argue that seclusion can be traumatizing for students, leading to feelings of fear, anxiety, and abandonment. It is important to note also that the practice can be traumatizing also for staff. Moreover, opponents' concerns are bolstered by the fact that there is limited empirical evidence to support the effectiveness of seclusion rooms in reducing challenging behaviours or promoting long-term positive outcomes for students.

The lack of solid evidence of effectiveness suggests that caution is due. Furthermore, there is a growing body of evidence nationally and internationally highlighting the disproportionate use of seclusion rooms on students from marginalized communities, primarily students with disabilities.⁴ This raises concerns about the potential for discrimination and inequity in the implementation of seclusion practices.⁵ Given the inherent vulnerability of many students with disabilities, it is doubly concerning that the following factors are well-established.⁶

- Seclusion can exacerbate feelings of isolation, anxiety, and depression.
- Seclusion rooms can be misused, as a form of punishment, rather than a supportive measure.
- Seclusion rooms can be overused, with some students spending excessive amounts of time isolated from their peers and teachers.
- Seclusion rooms can create a culture of fear and control, rather than a culture of support and understanding.
- Lack of clear oversight surrounding the use of seclusion rooms can leave students vulnerable to abuse and neglect.

It is therefore essential for educators to consider alternative strategies for managing student behaviour that prioritize positive reinforcement, de-escalation techniques, and individualized support. Moreover, continued efforts should be made to address potential systemic issues such as inadequate training for

³ See, for example: New Brunswick Association for Community Living, "Response to Ensuring Student and Staff Safety: Guidelines for Restraint and Seclusion Procedures in Schools," February, 2018;

⁴ See, for example: Inclusion BC, "Stop Hurting Kids II Restraint & Seclusion in BC Schools: 2017 Survey Results & Recommendations," May, 2018. [InclusionBC_StopHurtingKids2.pdf](#)

⁵ Robert, Amanda, *American Bar Association Journal*, "Children should be protected from unreasonable restraints, seclusion and searches, ABA House says" (3 August 2020), online:

<https://www.abajournal.com/news/article/resolution-103-111b#google_vignette>.

⁶ See, for example: Inclusion Alberta, *Use of Seclusion and Restraints in Schools September 2018 Survey Results Summary*, https://inclusionalberta.org/clientuploads/Seclusion_and_Restraint_Survey_Results.pdf, at p. 25;

Morrison, Nick, "Isolating Children in School 'Damages Mental Health'", *Forbes* (9 January 2020), online:

<https://www.forbes.com/sites/nickmorrison/2020/01/09/isolating-children-in-school-damages-mental-health/?sh=19b0331730fd>;

Bartlett, Nadine Alice and Taylor Floyd Ellis, "Physical Restraint, Seclusion, and Time-Out Rooms in Canadian Schools: Analysis of a Policy Patchwork" *Canadian Journal of Educational Administration and Policy*, 195, 31-48 (28 January 2021), online(PDF): <https://files.eric.ed.gov/fulltext/EJ1288174.pdf>

school staff, insufficient resources for supporting students with developmental needs, and any overreliance on punitive measures in school discipline policies. It is worth mentioning here that the Department provides training funding to School Districts, and also has an all-staff course on de-escalation available online.

The Department of Education and Early Childhood Development Anglophone Sector has created guidelines for the use of seclusion and restraint in schools: *Guidelines for Restraint and Seclusion Procedures in Schools*⁷ These guidelines, the document states, “are consistent with, and are to be applied within the framework of Policy 703 – Positive Learning and Working Environment and Policy 322 – Inclusive Education.”⁸

The Guidelines interpret the Inclusive Education Policy to require that:

“When disruptive behaviour is attributable to the student’s exceptionality and he or she is unable to control this behaviour, appropriate interventions will be employed with the needs of the student in mind.”

The Guidelines interpret the Positive Learning and Working Environment Policy to require that each school must:

“Implement evidence-based practices designed to teach pro-social behaviours for students with behavioural challenges.”

“Ensure any removal from the common learning environment is temporary.”

“Ensure any removal from the common learning environment is never used as a punishment. School protocols and personalized learning plans must have measures in place to guard against the effect of humiliating or intimidating the student.”

And

“Ensure that emergency physical intervention and/or supervised de-escalation are only used as a last resort in an emergency situation, when doing so does not endanger the student, and where continuous monitoring is provided.”

The Guidelines state that:

⁷ New Brunswick Department of Education & Early Childhood Development - Education Support Services, *Ensuring Student and Staff Safety: Guidelines for Restraint and Seclusion Procedures in Schools*, October 2017.

⁸ New Brunswick Department of Education & Early Childhood Development - Education Support Services, *Ensuring Student and Staff Safety: Guidelines for Restraint and Seclusion Procedures in Schools*, October 2017, page 5.

“Seclusion should only be used if a student is engaging in intense violent behaviour that presents substantial risk to the student or others and the risk can be diminished by placing the student in a safe environment away from others.”⁹

And the Guidelines clarify further that seclusion should not be used:

- when substantial risk of injury no longer exists;
- when a known medical, physical or psychological condition of the student would make the seclusion procedures dangerous for that student (e.g., students expressing suicidal thoughts, students with heart or circulatory conditions, history of trauma, or other conditions). In these situations, alternative strategies should be planned in collaboration with the parent/guardian and in consultation with a medical or mental health specialist. These alternative strategies should be reflected in the PLP-IBSP;
- when the student engages in severe self-injurious behaviours;
- as a punishment, or to force compliance with staff commands;
- without parental/guardian consent.¹⁰

The practice of secluding students has its roots in the belief that removing them from stimulating environments can help de-escalate disruptive behaviors and ensure the safety of both the student and others. Intuitively, one can imagine the benefits of providing a safe space for students who are feeling overwhelmed or anxious to regulate their emotions.

Conversely, the deleterious impacts may be severe, and one can intuitively imagine how they can exacerbate feelings of isolation, anxiety, and depression, how they can be used as a form of punishment, rather than a supportive measure, how they can be overused, with some students spending excessive amounts of time in seclusion, and how they can create a culture of fear and control, rather than a culture of support and understanding.

Intuition, however, is not a valid basis for policy-making. For that, government needs research and evidence of the best possible practices. And it needs to be able to see the effects of these practices on children.

⁹ New Brunswick Department of Education & Early Childhood Development - Education Support Services, Ensuring Student and Staff Safety: Guidelines for Restraint and Seclusion Procedures in Schools, October 2017, page 10.

¹⁰ New Brunswick Department of Education & Early Childhood Development - Education Support Services, Ensuring Student and Staff Safety: Guidelines for Restraint and Seclusion Procedures in Schools, October 2017, page 10.

Data on the use of seclusion rooms in schools nationally is limited.¹¹ In New Brunswick provincially it is apparently almost non-existent, despite the requirement for each District to have a process for compiling and reporting data.

An email was sent from the Advocate's Office to each school District, noting that the Advocate's Office is reviewing use of seclusion rooms in schools, with the probable outcome of making recommendations to the Department of Education and Early Childhood Development. Each email included a request to provide each District's most recent annual review of seclusion data, if such a report exists.

Some Districts appear to use seclusion rooms more frequently than do others, but it is not possible to really assess that from the responses. What we know is that most districts don't track data. One District did provide information on the number of times seclusion rooms were used, the length of the segregation period, the nature of the incident that led to the segregation period, when the parent/guardian was informed, and strategies used to try to calm the situation before resorting to the room. The rest only sent the number of times isolation rooms were used either for the entire District, or by individual school, and usually did not have that data on hand but instead had to make the effort to collect it in order to respond to the Advocate's request. No District sent a report that they share with the Department. This is important: the Department does not get information from Districts to know what is happening across the province, although such information is required by the Guidelines.

The Department has no data. This raises concerns as to the ability of the civil service to uphold the Legislature's will, as reflected in the Education Act, of "ensuring that reasonable steps are taken to create and maintain a safe, positive and effective learning environment."¹²

No one would disagree that rather than relying on seclusion rooms, schools should as far as possible use alternative strategies to support students with emotional and behavioral challenges. Everyone would prefer proactive and positive behavioural interventions and supports, trauma-informed approaches, and social-emotional learning programs to teach students skills such as self-awareness, self-regulation, and empathy.

Cases come to the Advocate's Office. Parents are upset. Children are impacted. And schools seem confused as to how to properly follow the Department's Guidelines. Further, it is not clear that the legal authority exists at all, and this needs to be cleared up quickly because it places educators at risk of legal consequences and leaves students subject to arbitrary power.

¹¹ Bartlett, N. & Floyd Ellis, T. (2021). Physical Restraint, Seclusion, and Time-Out Rooms in Canadian Schools: Analysis of a Policy Patchwork. *Canadian Journal of Educational Administration and Policy / Revue canadienne en administration et politique de l'éducation*, (195), 31–48. [Physical Restraint, Seclusion, and Time-Out Rooms in Canadian Schools: Analysis of a Policy Patchwork \(erudit.org\)](https://erudit.org/en/revue/cjeap/2021-01-01/688111)

¹² Education Act, SNB 1997, c E-1.12, s. 28(2)(c) <<https://canlii.ca/t/566m7>>

Consideration was given to calling for the practice to be banned. However, to introduce such a sweeping change today would place students at a different kind of risk. The purpose of seclusion rooms is that they are not to be used punitively, but simply for restraint as a last resort when a child is placing themselves or others at risk. If the power to seclude in these situations is completely removed from schools, then schools will default to the sector that retains that power – the police. And if that happens, there is a high risk of criminalizing disability, which is something that simply does not work.

However, we are seeing cases where the practice should not have been necessary. Often, schools only look to justify the practice by looking at the immediate choice facing the educator – once the matter escalated, what else could be done? There is another type of analysis which needs to happen.

To use a metaphor which will be all too familiar to many Canadians, imagine this scenario that every hockey fan has seen before. After numerous breakdowns and missed assignments on defence, a player from the opposing team with a full head of steam is about to take control of the puck with an unimpeded path to the net. The defender, caught flat-footed and without time to gather sufficient steam to get back on defence, simply pulls the opposing skater down, choosing a penalty over the likely outcome of giving his opponent a breakaway. As any hockey fan can tell you, in the moment this is a defensible choice.

When the coach reviews the play the next day, the team will not only be looking at that decision. They will be looking at everything that led up to that decision – the missed assignments, the failure to anticipate, the failure to control the puck. Even if the decision to take the penalty was defensible in the moment, it is still essential to ask what breakdowns led to such a grim choice.

This is often the case in our discussions around inclusive education as well. Advocates for removing children from the common learning environment sometimes look only at the choice facing the educator at the moment of crisis. This may be fine in understanding the educator's dilemma, but it lets the system off the hook all too frequently. The choices which came before determined the set of options at the moment of crisis. Those choices – leaving too many school psychology positions unfilled, failing to provide resources upfront, sending children on partial days with no services to make the return more likely to succeed, waiting too long to provide a complex case designation or call upon Integrated Service Delivery – these are the choices which also must be looked at.

Our recommendations in this case will follow three broad categories – defining and regulating the practice so that educators know exactly what powers they have, overseeing the practice through inspection and reporting so that we know which schools are best at avoiding the practice and which may be overusing it, and addressing the multiple system failures which have been raised in past reports of this office regarding the underfunding and slow response times which tragically continue to mark our approach to inclusive education.

It should be noted that in the United States, it is a federal regulation that every use of seclusion must be recorded and explained, and that these practices must be regularly reviewed. New Brunswick's Department of Education and Early Childhood Development should comprehensively consider this possibility.

Currently, the Department has Guidelines that are not being followed, and this report from the Advocate focuses on what needs to be done to correct this situation, hopefully while the Department seeks to determine whether the use of seclusion rooms can be ended altogether. The purpose of the Advocate's review here is not to be overly prescriptive in how the Department should address the problem, but rather to review whether the Department of Education and Early Childhood Development has the structural and procedural mechanisms in place to ensure that the current use of seclusion rooms is effective and appropriate.

Issues

1. Is there adequate District and Departmental oversight on the use of seclusion rooms?
2. Is there adequate input from clinical experts on the use of seclusion rooms in general and in the cases of individual students?
3. Are the current Departmental Guidelines for the use of seclusion rooms adequately clear and sufficiently detailed to ensure appropriate use of these rooms?
4. Has the Department ensured that the use of seclusion rooms across the Province comply with the New Brunswick Human Rights Act and the Canadian Charter of Rights and Freedoms?

Issue 1

Is there adequate District and Departmental oversight on the use of seclusion rooms?

We return to the problem cited at the outset of this report. Children in New Brunswick schools are the only group we can think of who can be detained and secluded without statutory language defining the limitations on that power and the obligations upon those who exercise it. This must be remedied immediately. Even once this is defined, there are significant deficiencies in how the practice is overseen and reported.

It is an obvious remark that without information, there cannot be understanding. We have asked the Department about whether Districts report data on the frequency of the use of isolation rooms. Documentation of seclusion is required as per the Department's Guidelines for Restraint and Seclusion Procedures in Schools. And each incident report "should be sent to a designated district administrator on a schedule determined by the school district." Further, "monitoring of physical restraint and seclusion procedures should occur at multiple levels: school, district, and EECD [the Department of Education and Early Childhood Development]." Most certainly no such monitoring in terms of data occurs at the Departmental level. It very apparently does not consistently occur at each District either, notwithstanding that the Department's Guidelines require that "The Superintendent or designate will conduct an annual review of all data associated with these guidelines. The process shall include summary data taken from the incident reports."¹³

No such Departmental monitoring occurs in terms of inspections, either. Within the Department's Guidelines, it is suggested that District Superintendents inspect seclusion rooms annually for adherence to Fire Marshall standards and that the rooms:

- have adequate lighting and ventilation including heat as appropriate;
- be free of any potential or predictable safety hazards such as sharp corners, light switches, exposed electrical outlets or wiring, equipment, and breakable glass;
- permit direct continuous visual and auditory monitoring of the student and with a means for the student to see the adult;
- not be locked;

¹³ New Brunswick Department of Education & Early Childhood Development - Education Support Services, Ensuring Student and Staff Safety: Guidelines for Restraint and Seclusion Procedures in Schools, October 2017, page 15.

- be part of school emergency evacuation procedure protocols.¹⁴

The Department does not employ any process to ensure that Districts actually undertake these inspections. Cases at the Advocate's Office have shown how these standards are not universally met.

Departmental oversight is necessary to ensure that schools are in fact adhering to Departmental guidelines. By assessing the conditions of seclusion rooms and the procedures followed during their use, inspections identify potential risks or shortcomings, and prompt appropriate actions to address them. Such oversight is necessary for accountability. Schools, Districts, and the Department itself are accountable for ensuring that guidelines, policies, and laws are followed.

We therefore make the following recommendations. Unless noted otherwise, all recommendations are directed to the department of Department of Education and Early Childhood Development.

Recommendations

Recommendation 1:

The Advocate recommends that the Department of Education and Early Childhood Development work immediately with the Office of the Attorney General to bring forward proper amendments to the *Education Act* defining the scope and limitations upon the use of seclusion in schools, in time for the Spring 2025 legislative session.

Recommendation 2:

The Advocate recommends that the Departmental Anglophone Sector document *Ensuring Student and Staff Safety: Guidelines for Restraint and Seclusion Procedures in Schools*, and Francophone Sector document *Lignes directrices visant l'utilisation de la contrainte physique et de l'isolement dans les écoles*, be amended to include province-wide directions on compiling and reporting data. The Department should be collecting province-wide data on the use of seclusion rooms, and publicly reporting on aggregated data.

Recommendation 3:

The Advocate recommends the Department of Education and Early Childhood Development designate a Departmental official to be tasked with the oversight of all seclusion rooms across the province. The

¹⁴ New Brunswick Department of Education & Early Childhood Development - Education Support Services, *Ensuring Student and Staff Safety: Guidelines for Restraint and Seclusion Procedures in Schools*, October 2017, page 11.

designated Departmental official should be responsible to receive and review all isolation reports from each District, and ensure that appropriate corrective action is taken when necessary.

Recommendation 4:

The Advocate recommends the Department of Education and Early Childhood Development create a standardized, trauma-informed, model to document and review the use of seclusion rooms across the Districts. The standardized model should include directions on conducting annual reviews of each room to ensure the psychological and physical wellbeing of the student and prevent added distress. Such practices should take into consideration, among other factors, observation capability, safety of materials and objects in the room, appropriate size of room, comfort, lighting, ventilation, and temperature control. Training on the model should be mandatory for all schools using seclusion rooms.

Issue 2

Is there adequate input from clinical experts on the use of seclusion rooms in general and in the cases of individual students?

The Department's position is, very understandably and commendably, that because each school has access to the clinical resources of Child and Youth Teams and Education Support Services Teams it is therefore expected that any time seclusion is required, these professionals will be consulted. It is not our experience at the Advocate's Office that this regularly occurs. We can see from the cases that come to us that no such consultation always happens. Although the cases that come to our office are those in which professionals or family members are concerned that seclusion is inappropriate and harmful, we cannot say whether clinical consultation even usually happens. Nor can the Department. In this respect, as with Issue 1 above, the Department is operating in the dark in regard to the use of seclusion rooms.

Recommendations

Recommendation 5:

The Advocate recommends that the Departmental Guidelines be amended to include directions on consultation with Child and Youth Teams and/or Education Support Services Teams. There should be mandatory discussion with a mental health professional before incorporating isolation as a mechanism in a student's Personalized Learning Plan - Individualized Behaviour Support Plan (PLP-IBSP).

Recommendation 6:

The Advocate recommends that the Departmental Guidelines be amended to include a mandatory protocol for providing psychological supports to students who have been placed in seclusion, such as debriefing sessions with a school counselor and the development of a tailored support plan to prevent any future incidents.

Recommendation 7:

The Advocate recommends that standards be developed, in conjunction with the professional organizations representing educators, for proper trauma-informed services to be provided to teachers and other educational professionals who are involved in the seclusion of students.

Issue 3

Are the current Departmental Guidelines for the use of seclusion rooms adequately clear and sufficiently detailed to ensure appropriate use of these rooms?

The Guidelines developed by the Department are clearly written and to a significant degree reflective of international research on the subject of seclusion rooms, albeit research dating from seven years or more ago. Developments in best practices, as well as increased understanding in child and youth developmental neuroscience have occurred in the interim, and an update to the Guidelines is warranted. It must be noted also that the number of research sources cited (7 sources) in the Guidelines is not reflective of the kind of comprehensive research warranted by the gravity of the subject.

Recommendations

Recommendation 8:

The Advocate recommends that the Departmental Guidelines be updated to reflect advancements in understanding of the impacts of seclusion rooms on child and adolescent development, and advancements in evidence-based best practices nationally and internationally.

Recommendation 9:

The Advocate recommends that the Departmental Guidelines be updated to explicitly detail limitations and procedures on the use of seclusion for vulnerable populations who may suffer disproportionate harm or be at greater risk in their use, such as students with specific disabilities, and those who are non-verbal. The Department should ensure that the Guidelines offer evidence-based guidance regarding

these populations, including such options as restricting their use in favour of appropriate means of ensuring safety or placing additional safeguards and oversight upon their use.

Recommendation 10:

The Advocate recommends that the Departmental Guidelines be updated to not only require mandatory meetings with parents/guardians to discuss all alternative strategies before the use of seclusion is considered, but also to ensure that parents/ guardians are provided with clear, detailed information about methods used, alternatives for de-escalation and the oversight and accountability process.

Issue 4

Has the Department ensured that the use of seclusion rooms across the Province complies with the New Brunswick Human Rights Act and the Canadian Charter of Rights and Freedoms?

The New Brunswick Human Rights Act prohibits discrimination on several grounds, including disability. Seclusion rooms may disproportionately affect students with disabilities, raising concerns about discrimination and the right to education in an inclusive environment.

Additionally, the use of seclusion rooms may potentially infringe upon the rights protected by the Canadian Charter of Rights and Freedoms, such as the right to security of the person (Section 7), the right to be free from arbitrary detention (Section 9), and the right to equality (Section 15).

The legality of seclusion rooms would ultimately depend on how they are implemented and whether they are used in accordance with relevant laws and regulations as well as the Human Rights Act and the Charter of Rights and Freedoms. To make this determination, there would have to be an assessment of the specific circumstances and practices surrounding their use in New Brunswick schools. As is clear from the analysis of issues 1-3 above, the Department has undertaken no such assessment and therefore has taken no steps to determine conformity with the law. It should be noted also that international human rights law instruments such as the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities, are important interpretative tools for all Canadian law, including statutes such as the *Education Act*, quasi-Constitutional legislation such as the *Human Rights Act*, and Constitutional law such as the Canadian *Charter of Rights and Freedoms*.

It also must be said that the legality of seclusion rooms will depend in large part upon the effectiveness of services prior to the crisis which necessitated their use. For this reason, the Advocate again notes that the response to the issues raised in “A Policy of Giving Up” has been woefully slow to even recognize the problem let alone deal with it. Therefore, the Advocate has elected to repeat some of the most common failings in our treatment of inclusive education in the hope that they will be given additional urgency.

Recommendations

Recommendation 11:

The Advocate recommends that the Department conduct a thorough review and assessment of the use of seclusion rooms in New Brunswick schools. This assessment should evaluate the specific current circumstances and practices of their use to determine conformity not only with the Department's Guidelines but with the law, including the Human Rights Act and the Charter of Rights and Freedoms. This review should include engagement with impacted students, parents, educators, disability rights advocates, and human rights experts. It should also be informed by the creation of an Expert Advisory Committee, with representation from various concerned groups and professional bodies. Following this review, the Department should provide a Memorandum to Executive Council to bring forward amendments to the Education Act that can be subject to debate and scrutiny in the Legislative Assembly.

Recommendation 12:

The Advocate recommends that the following steps be undertaken with urgency:

- action be taken forthwith to meaningfully address the shortage of school psychologists at the training level;
- clear targets be established for reducing the age at which complex case designations are given;
- appropriate training be offered to principals and other educators in the system regarding legal obligations for the duty to accommodate as set out in the *Moore* decision of the Supreme Court of Canada;
- proper guidelines be established to hold the system accountable for a failure to intervene early and to encourage cross-departmental collaboration;
- ongoing barriers to the use of Integrated Service Delivery be addressed including misconceptions around privacy law and repeated failures to access the services;
- a fund allowing for schools to access extraordinary expenditures when budgets are inadequate be established with clearly communicated guidelines for accessing those funds; and
- reviews of how districts use summer months and handle transfers of schools be undertaken.

The Advocate requests that the Department provide a response within four weeks of the date of this letter of the steps taken to give effect to these recommendations, or in the alternative, a statement that the Department is rejecting these recommendations.

DATED this 9th day of December, 2024

Kelly A. Lamrock, K.C.
Advocate