

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 331  
Ways and Means

(Delegates Luedtke and Ebersole)

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**Education - Behavior Intervention Plans - Physical Restraint and Seclusion**

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This bill prohibits the use of physical restraint and seclusion in disciplining a public or nonpublic school student except under specified conditions, including a new requirement for a risk assessment by a licensed professional prior to the use of seclusion. The bill adds trauma-informed interventions to the definition of behavioral intervention plans and requires the Maryland State Department of Education (MSDE) to make sufficient behavior intervention training available and coordinate with public and nonpublic schools to ensure that all school personnel who directly work with students on a daily or routine basis receive specified professional development training.

The bill takes effect July 1, 2017.

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**Fiscal Summary**

**State Effect:** General fund expenditures increase to the extent that the bill's enhanced restrictions on the use of seclusion result in more students being placed in a more restrictive environment and thus lead to increased use of nonpublic placements to provide services to those students. The extent of any increase in expenditures cannot be reliably estimated. No effect on revenues.

**Local Effect:** Expenditures by local school boards increase for required training and either to hire or contract with licensed professionals to conduct risk assessments that are a precondition for the use of seclusion under the bill. A reliable estimate of the increase is not feasible but is likely significant for individual school systems. To the extent that nonpublic placements increase, local school systems share in those costs as well. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** Licensed physicians, clinical psychologists, and social workers likely experience an increase in demand for their services to conduct risk assessments.

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## Analysis

**Bill Summary:** The bill defines a “public agency” to be MSDE, a local school system, or any State agency responsible for providing education to students. It also defines seclusion to be confinement of a student alone in a room, enclosure, or any other space from which the student is physically prevented from leaving.

A public agency or nonpublic school may not use physical restraint unless (1) it is necessary to protect a student or another individual from imminent serious physical harm and (2) other less intrusive, nonphysical interventions have been demonstrated by empirical evidence to be ineffective.

A public agency or nonpublic school may not use seclusion unless (1) it is necessary to protect a student or another individual from imminent serious physical harm; (2) other less intrusive, nonphysical interventions have been demonstrated by empirical evidence to be ineffective; and (3) a licensed physician, clinical psychologist, or clinical social worker has authorized its use.

Before any of the above individuals may authorize the use of seclusion, the individual must (1) have received training in positive behavior intervention strategies and supports, functional behavior assessment, and other related areas specified in regulation; (2) be familiar with the student; and (3) have completed a risk assessment of the student to determine if seclusion is contraindicated. A public agency or nonpublic school must document the completion of the risk assessment at specified times.

If a door to a room used for seclusion has a locking mechanism, the mechanism may be engaged only when it is held in position by an individual or, if the mechanism is electronically engaged, it must automatically release if a fire alarm is activated. Students in seclusion must be directly observed at all times. Periods of seclusion may not exceed 30 minutes and must be discontinued when it is no longer necessary to protect the student or another individual. If a student’s behavior escalates with the use of seclusion or the student is otherwise adversely affected, specified alternative behavior interventions must be used.

In consulting with representatives of institutions of higher education and the Professional Standards and Teacher Education Board, the State Superintendent must ensure that sufficient training is available for teachers and administrators regarding evidence-based positive behavioral interventions, strategies, and supports, and trauma-informed

interventions. Trauma-informed interventions are defined in the bill as an approach to a behavior intervention plan that is informed by the recognition of the impact that trauma may have on an individual's physical and emotional health and ability to function.

MSDE must coordinate with each public agency to ensure that all school personnel who work directly with students on a daily or routine basis receive initial and periodic professional development regarding evidence-based positive behavioral interventions, strategies, and supports, and trauma-informed interventions to challenging behavior.

Beginning with the 2018-19 school year, each school must submit to MSDE by December 1 of each year a report on the number of physical restraint and seclusion incidents in a specified format.

MSDE must adopt regulations to implement the bill. The bill also repeals an obsolete task force.

**Current Law:** Physical restraint means the use of physical force, without the use of any device or material, to restrict the free movement of all or a portion of a student's body. Seclusion means the confinement of a student in a locked room, closet, box, or other space from which the student is physically prevented from leaving.

The State Superintendent must consult with representatives of institutions of higher education and the Professional Standards and Teacher Education Board with respect to training requirements for teachers to ensure that sufficient training is available regarding positive behavioral interventions and strategies, consistent with professionally accepted practices and standards for persons entering the field of education.

The Code of Maryland Regulations (COMAR) prohibits the use of physical restraint and seclusion by public agencies and nonpublic schools except in specified circumstances. Physical restraint and seclusion may be used only when (1) there is an emergency situation and physical restraint is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive nonphysical interventions have failed or been determined to be inappropriate; (2) the student's behavioral intervention plan or individualized education plan (IEP) describes specific behaviors and circumstances in which physical restraint may be used; or (3) the parents of a nondisabled student have otherwise given written consent for the use of physical restraint while a behavior intervention plan is being developed.

Physical restraint and seclusion may be applied only by school personnel who are trained in their appropriate use. Regulations include specific guidelines about the form and duration of physical restraint and seclusion that may be used, and they require that each instance be documented and reported to parents. They also specify the specific follow-up

interventions that public agencies and nonpublic schools must take after the use of physical restraint or seclusion for students with and without IEPs.

The State and local school systems share in the cost of education of students with disabilities in nonpublic schools. For each placement, local school systems are responsible for the local share of the basic cost of educating a nonhandicapped child plus two times the basic cost per pupil. This is often referred to as the 300% calculation. For nonpublic placement costs that exceed the 300% calculation, the State and school systems share in the excess cost, 70% and 30%, respectively. The proposed fiscal 2018 State budget includes \$128.6 million in general funds for nonpublic placements.

**State Fiscal Effect:** The bill's restrictions on the use of restraint and seclusion mirror in many respects the restrictions currently in COMAR. One key difference, however, is the requirement that a risk assessment be completed by a licensed professional before seclusion may be used with a student. To the extent that this leads to less use of seclusion by schools, more students may require a more restrictive environment or nonpublic placement in order to receive educational services. Additional nonpublic placements increase general fund expenditures by MSDE for the State share of costs not covered by local funds. Any increase cannot be reliably estimated but could be significant.

**Local Fiscal Effect:** Local expenditures will increase for local school systems to either hire or contract with licensed physicians, clinical psychologists, or social workers to conduct the required risk assessments, which must be documented and updated at least annually and in some cases more often, according to the bill. A reliable estimate of those costs is not feasible because it depends on the extent to which seclusion is used in each school and the availability of school psychologists or social workers in each school but could be significant for individual school systems. To the extent that nonpublic placements increase as a result of the new requirements, local expenditures increase for the local share of those costs.

In addition, local school systems will need to train a substantial number of teachers and other personnel in implementing the new risk assessments and in trauma-informed behavior interventions. Costs for training also cannot be reliably estimated, but may be significant given the large number of teachers who work with or come into contact with students who are disruptive and/or who have IEPs. In some or many cases, the training can be incorporated into existing training programs.

Montgomery County Public Schools, the largest school system in the State, estimates that hiring outside professionals to conduct risk assessments and implementing the training required by the bill will cost over \$1.5 million annually. Charles County Public Schools advises that each risk assessment costs approximately \$2,500, with an impact of approximately \$500,000 annually on the school system. Baltimore County Public Schools

notes that each school would need to have a certified trainer in appropriate interventions; the Department of Legislative Services notes that is not required by the bill, and that the fiscal impact of the bill will depend in part on how each school system chooses to implement the requirements.

**Additional Comments:** Nonpublic schools must also implement the bill's requirements, including risk assessments and staff training. These costs may be significant; a portion of those costs may be offset by higher provider rates for nonpublic placements, which would increase the State and local share of nonpublic placement costs.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 786 (Senator Zucker, *et al.* - Education, Health, and Environmental Affairs) is designated as a cross file, but it is different.

**Information Source(s):** Baltimore, Charles, and Montgomery counties; Maryland State Department of Education; Department of Health and Mental Hygiene; Department of Legislative Services

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