

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 705

(Senator Zucker, *et al.*)

Education, Health, and Environmental Affairs

Ways and Means

Education – Physical Restraint and Seclusion – Limitations, Reporting, and Training

This bill prohibits specified public agencies, and nonpublic schools with specified exceptions, from using seclusion as a behavioral health intervention for a student. The bill prohibits, with exceptions, a public agency or nonpublic school from using physical restraint on a student as a behavioral health intervention. Before using seclusion as a behavioral health intervention for a student in a nonpublic school, a health care practitioner must possess specified credentials, have received relevant training, and be clinically familiar with the student. If a student in a public school, or placed in a nonpublic school by the local school system, is physically restrained 10 or more times in a school year, the school must notify the local school system and the Maryland State Department of Education (MSDE) at the earliest opportunity. If a student enrolled in a public agency that is not a public school is physically restrained 10 or more times in a school year, the public agency must notify MSDE at the earliest opportunity. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: General fund expenditures increase by \$574,100 in FY 2023 for MSDE staffing and contractual services. Out-year expenditures reflect annualization, inflation, and termination of one-time costs. No effect on revenues.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	574,100	330,000	339,200	348,100	357,200
Net Effect	(\$574,100)	(\$330,000)	(\$339,200)	(\$348,100)	(\$357,200)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Some local school systems incur significant additional expenditures to carry out responsibilities under the bill, as discussed below. Local revenues are not affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: The term “physical restraint” is redefined in statute, consistent with the definition in the Code of Maryland Regulations, to mean a personal restriction that immobilizes a student or reduces the ability of a student to move their torso, arms, legs, or head freely that occurs during school hours. The bill clarifies that “seclusion” does not include a behavior intervention plan of separating a student by placing the student (1) into a nonlocked room from which the student is allowed to leave or (2) within a separate location in a classroom from which the student is not physically prevented from leaving.

The bill adds the Juvenile Services Education Program (JSEP) to the list of public agencies, which already includes MSDE, a local school system, the Maryland School for the Deaf, and the Maryland School for the Blind. However, the prohibition against using seclusion or physical restraint as a behavioral health intervention for a student does not apply to JSEP.

Neither a public agency nor a nonpublic school may use physical restraint on a student as a behavioral intervention unless (1) physical restraint is necessary to protect the student or another individual from imminent serious physical harm and (2) other, less intrusive, nonphysical interventions have failed or been demonstrated to be inappropriate for the student.

A nonpublic school may not use seclusion as a behavioral health intervention for a student unless (1) seclusion is necessary to protect the student or another individual from imminent serious physical harm; (2) other, less intrusive interventions have failed or been demonstrated to be inappropriate for the student; (3) a qualified health care practitioner is directly observing the student during seclusion; (4) the health care practitioner concludes that seclusion is not contraindicated; and (5) a locking mechanism on the door meets specified criteria.

Requirements to provide notification at the earliest opportunity following the physical restraint or seclusion of a student must be met within four business days after a student’s tenth incident of physical restraint or seclusion. Upon notice from a public or nonpublic school that a student enrolled in a public or nonpublic school is physically restrained 10 or more times in a school year, a local school system must review the student’s case and

evaluate whether the public school or nonpublic school could use less restrictive behavioral health interventions, and share the local school system's recommendations with MSDE and the school. Upon notice from a public agency (that is not a local school system) that a student enrolled in the public agency is physically restrained 10 or more times in a school year, MSDE must review the student's case and evaluate whether the public agency could use less restrictive behavioral health interventions, and share its recommendations with the public agency.

The bill adds elements to annual reports submitted to MSDE by public agencies and nonpublic schools regarding physical restraint and seclusion incidents, and specifies how the number of incidents to report is determined. MSDE must verify the accuracy of a report that indicates no physical restraint or seclusion incidents. If MSDE is unable to verify the accuracy of a report, MSDE must recommend improvements in data collection and positive behavioral interventions at the public agency or nonpublic school.

Public agencies and nonpublic schools must annually report on (1) for nonpublic schools, the policy changes made to further reduce the use of seclusion incidents during the prior school year and (2) the policy changes or new professional development opportunities designed to further increase positive behavioral interventions and reduce physical restraint or seclusion incidents in the upcoming school year.

MSDE must develop an accountability system to measure compliance by public agencies and nonpublic schools with regulations adopted on the use of physical restraint and seclusion and must analyze data and information collected from relevant reports to determine trends and patterns in behavioral interventions. MSDE must also publish on its website the annual report to the General Assembly regarding relevant findings and recommendations. The State Superintendent must adopt specified positive behavioral intervention training requirements for school employees who interact routinely with students, and issue guidance on best practices in implementing positive behavior intervention plans. These training requirements are the basis of a program of professional development that the superintendent must share with school employees.

A public agency and its local school system or a nonpublic school must submit a systemic, evidence-based corrective action plan to MSDE if the public agency or nonpublic school fails to comply with any provision of the relevant subtitle or if it reports that a student has been physically restrained or placed in seclusion 10 or more times in a school year.

MSDE must adopt regulations to implement certain provisions of the bill.

Current Law: Physical restraint means, with exception, 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 room, an enclosure, 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 (PSTEB) with respect to training requirements for teachers and administrators 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 program (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.

COMAR also requires that the door of a seclusion room must not be fitted with a lock unless it releases automatically when not physically held in the locked position by school personnel on the outside of the door. School personnel must remain in close proximity at all times, actively observe a student in seclusion, and provide a student in seclusion with an explanation of the behavior that resulted in removal and instructions on behavior required to return to the learning environment. Additionally, a seclusion event may not restrict a student's ability to communicate distress and may not exceed 30 minutes.

Each time a seclusion or restraint is used on a student, school personnel must document, as specified, other less intrusive interventions that failed. Each public and nonpublic school must annually report to MSDE regarding physical restraint and seclusion incidents. Each public school must also report for the prior school year all professional development provided to designated school personnel relating to positive behavioral interventions, strategies, and supports, and trauma-informed interventions. MSDE must provide guidance

to public agencies and nonpublic schools regarding the requirements of the use of seclusions and rooms for seclusion and report to the General Assembly regarding findings and recommendations made by public and nonpublic schools.

State Expenditures: General fund expenditures increase beginning in fiscal 2023 for MSDE to carry out various responsibilities under the bill. MSDE advises that the new, formal, student-level data collection will require 0.6 of a full-time equivalent (FTE) position to implement and manage the data collection, including collecting data from nonpublic schools. MSDE also requires 2.0 FTEs with expertise in behavioral interventions, strategies, and supports; alternatives to restraint and seclusion; and mental and emotional well-being, to investigate incidents; review and analyze individual student restraint or seclusion incident data, case files, agency decisions and responses, and patterns of interventions; and to verify when no incidents are reported.

MSDE anticipates \$100,000 in fiscal 2023 for contracted services to develop system requirements to collect, track, and report individual student-level incidents of restraint and seclusion. MSDE also requires \$200,000 in contracted services in fiscal 2023 to identify any gaps in behavioral interventions, strategies, and supports, and to identify or develop, in consultation with representatives of institutions of higher education and PSTEB, positive behavioral intervention training requirements for teachers, administrators, behavioral health specialists, paraprofessionals, aides, and any other employees who interact routinely with students. The vendor is responsible for implementing evidence-based training that includes trauma-informed interventions and strategies for de-escalation.

For reasons discussed above, general fund expenditures increase by \$574,094 in fiscal 2023, assuming a three-month delay after the bill’s July 1, 2022 effective date. This estimate reflects the cost of MSDE hiring 2.6 education/behavioral health specialists. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. It assumes that all contractual expenses are incurred in the first year.

Regular Positions	2.6
Regular Salaries and Fringe Benefits	\$252,383
One-time Start-up Costs	19,644
Ongoing Operating Expenses	2,067
Contractual Expenses	<u>300,000</u>
Total FY 2023 State Expenditures	\$574,094

Future year expenditures reflect elimination of one-time contractual expenditures and full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

The Department of Juvenile Services can implement the bill with existing budgeted resources.

Local Fiscal Effect: Baltimore City Public Schools advises that the bill is consistent with its current practices and therefore does not affect its finances or staffing needs. However, Montgomery County Public Schools and Prince George’s County Public Schools anticipate substantial additional expenditures under the bill related to the need to provide staff training on positive behavioral interventions and supports, crisis intervention, and related responsibilities under the bill, as well as costs associated with additional staff to assure monitoring of instances of seclusion and physical restraint. Local school systems may incur additional costs related to corrective action plans, as necessary.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1255 (Delegate Ebersole, *et al.*) - Ways and Means.

Information Source(s): Baltimore City Public Schools; Montgomery County Public Schools; Prince George’s County Public Schools; Maryland State Department of Education; Maryland School for the Deaf; Maryland Department of Health; Department of Juvenile Services; Department of Legislative Services

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