

# Education Advocacy Coalition for Students with Disabilities

## HOUSE WAYS AND MEANS COMMITTEE

### HOUSE BILL 1043

#### EDUCATION—PHYSICAL RESTRAINT AND SECLUSION—GUIDELINES AND REPORTING

FEBRUARY 26, 2020

POSITION: SUPPORT

The Education Advocacy Coalition for Students with Disabilities (EAC), a coalition of more than 25 organizations and individuals concerned with education policy for students with disabilities in Maryland, strongly supports House Bill 1043, which would require analysis of data collected about the use of restraint and seclusion with students in public and nonpublic schools, development of an accountability system to ensure that the strong regulations and guidance in place in Maryland are implemented fully, and increase the ability of school staff to better meet the needs of their students by addressing gaps in teacher preparation and professional development, thereby reducing the reliance on restraint and seclusion as a tool of classroom management. As was discussed at length during the hearings on Senate Bill 786 and its companion House Bill in 2017, restraint and seclusion can be aversive, trauma-inducing and dangerous, often resulting in injury to students and sometimes to school staff as well.

Senate Bill 786, which was enacted and became effective on July 1, 2017, required, for the first time, collection and reporting of data regarding the use of restraint and seclusion in public and nonpublic schools throughout the state. By December 1<sup>st</sup> of each year, MSDE must issue a report to the General Assembly with data, disaggregated by a number of categories including age, race and ethnicity, disability, placement, gender and jurisdiction. The legislation also required the appointment of a workgroup to make recommendations to the Maryland State Department of Education (MSDE) regarding revisions to the Code of Maryland Regulations. The workgroup issued its report; MSDE adopted some, but not all, of the recommendations, and new regulations were finalized in 2018, strengthening the protections in place for students. Subsequently, MSDE issued strong guidance clearly reiterating that restraint and seclusion may be used only when a student poses “imminent serious physical harm to self or others” and that this term means “[a] substantial risk of death; [e]xtreme physical pain; [p]rotracted and obvious disfigurement; or [p]rotracted loss or impairment of the function of a bodily member, organ or mental faculty.” Because all students, those with and without disabilities, are covered by the legislation and regulations, MSDE lodged responsibility for implementation and oversight of the legislation and regulations with its Division of Student Support, Academic Enrichment & Educational Policy. EAC members and many others hoped and expected that with stronger regulations and strong guidance from MSDE, and with the training requirements also included in Senate Bill 786, the incidence of restraint and seclusion would decrease.

Unfortunately, that has not been the case. The General Assembly has now received two reports from MSDE covering the 2017-18 and 2018-19 school years. The incidence of restraint and seclusion remains extremely high in many jurisdictions. For example, during the 2017-18 school year, Calvert County reported 576 restraint incidents and during the 2018-19 school year it reported 750. Frederick County reported just under 2000 restraint incidents during the 2018-19 school year, a marginal decrease from the previous year, but jumped from 837 incidents of seclusion to 1604, the highest of any jurisdiction in

the state. Many districts disproportionately restrain and seclude students of color, such as Montgomery, where during the 2018-19 school year, 72% of the restraint incidents and 77% of the seclusion incidents involved students of color. Across all districts, the vast majority of students who are restrained and placed in seclusion are students with disabilities and the majority are in elementary school.

House Bill 1043 is needed because it would address some of the gaps illuminated by the Senate Bill 786 Implementation process. MSDE's Division of Student Support, Academic Enrichment & Educational Policy collects the data required by Senate Bill 786 but does no analysis of the data and makes no effort to identify school districts or nonpublic schools that may be violating the regulations. The Division makes no attempt to identify trends or to target districts with a high use of restraint and seclusion for support, professional development or enforcement. House Bill 1043 would require an analysis of data and would require districts and schools with the highest numbers to be targeted with particular recommendations for how to reduce the use of restraint and seclusion; data verification would be required for any districts reporting no use of restraint or seclusion.

Part of the reason there has been no data analysis or follow up with districts is because MSDE's Division of Student Support, Academic Enrichment & Educational Policy, unlike the Division of Early Intervention and Special Education, has no accountability structure in place to ensure compliance with the regulations. House Bill 1043 would require MSDE to develop an accountability structure and to take responsibility for reducing the use of restraint and seclusion in public and nonpublic schools.

Finally, although the importance of teacher preparation and professional development were recognized with a limited attempt to address these critical issues even in the initial 2003 legislation enacted by the General Assembly, it has become increasingly evident that many teachers enter their classrooms unprepared to meet the academic and behavioral needs of their students. By requiring MSDE to work with higher education institutions and by requiring additional professional development, House Bill 1073 recognizes and makes a more robust effort to address this issue.

For these reasons, the EAC supports House Bill 1043. For more information, please contact Leslie Seid Margolis, Chairperson, at [lesliem@disabilityrightsmd.org](mailto:lesliem@disabilityrightsmd.org) or 410-727-6352, extension 2505.

Respectfully submitted,

Selene A. Almazan, Selene Almazan Law, LLC

Rene Averitt-Sanzone, Parents' Place of Maryland

Linda Barton, MSED, Educational Consultant

Elizabeth Benevides, Howard County Autism Society

Ellen A. Callegary, Law Offices of Ellen A. Callegary, P.A.

Michelle Davis, ABCs for Life Success

Jennifer Engel Fisher, Weinfeld Education Group

Lisa Frank, Special Kids Company

Ann Geddes, Maryland Coalition of Families

Morgan Horvath, Abilities Network

Nicole Joseph, Nicole Joseph Law

Rosemary Kitzinger and Marjorie Guldan, Bright Futures, LLC

Rachel London, Maryland Developmental Disabilities Council

Sharon Manecki, National Federation of the Blind of Maryland

Leslie Seid Margolis, Disability Rights Maryland

Mark B. Martin, Law Offices of Mark B. Martin, P.A.

Ellen O'Neill, Atlantic Seaboard Dyslexia Education Center

Rebecca Rienzi, Pathfinders for Autism

Sarah Ruth, Parent Advocacy Consortium

Lori Scott, The Arc Maryland

Karleen Spitulnik, Decoding Dyslexia Maryland

Ronnetta Stanley, Loud Voices Together

Wayne Steedman, Steedman Law Group, LLC

Maureen van Stone, Project HEAL at Kennedy Krieger Institute

Jessica Williams, M. Ed., Education Due Process Solutions