



Bill: House Bill 1166
Date: February 24, 2021
Subject: Education – Physical Restraint and Seclusion – Requirements, Reporting, and Training
Position: Letter of Information
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The Maryland Association of Nonpublic Special Education Facilities (MANSEF) is providing information for your consideration regarding HB 1166 - Education – Physical Restraint and Seclusion – Requirements, Reporting, and Training. The purpose of the bill is to modify existing statute and subsequent regulations to further contain the use of restraint and seclusion in public and nonpublic special education schools.

MANSEF represents 70 nonpublic special education schools approved by MSDE under COMAR 13A.09.10. We serve students with a wide range of disabilities such as autism, developmental delays and students with highly intensive emotional issues. Our member schools are required to follow COMAR 13A.08.04. – Student Behavior Interventions - which most of this bill already addresses.

The MANSEF schools fulfill a valuable role on the full continuum of placement options for students who require a unique and specialized educational setting. We strive to ensure that appropriate, continual training is utilized and required for staff educating students with special needs that both staff and students are safe and free from injury, physical or emotional. The MANSEF schools continue to utilize best practices with evidence-based methodologies in serving the most challenged students and fully supports any efforts to reduce the use of restraint and seclusion. Additionally, we fully agree that improvements to data collection are warranted and necessary for a complete understanding as interpretations vary among the stakeholders and advocates. MSDE should be afforded with the proper resources to access an independent third party for a more complete analysis to provide constructive recommendations regarding the use of restraint and seclusion.

One aspect of the proposed bill that concerns our members is the list of health care practitioners who must be on-site directly observing the student during the seclusion. The proposed language essentially limits which health care practitioners have the expertise to conduct the observations. It arbitrarily excludes other qualified professionals in the building who by the very nature of their certification or licensure are professionally capable to conduct an observation. Furthermore, many of the schools do not employ these specific professionals and would therefore be unable to comply even though they employ other professionals who could appropriately provide the required observation. We suggest that the IEP team can and should be the best avenue to make the determination as to who can do the observations.

We offer a side-by-side comparison below of some of the proposed language in HB 1166 with current COMAR 13A.08.04. We respectfully request that you consider this information as you deliberate HB 1166.

Proposed language in HB 1166 if passed, will be added to Article - Education 7-1101-03	What is currently in COMAR 13A.08.04.	Comment
<p>Page 3 – Lines 20 - 29</p> <p>(A) A PUBLIC AGENCY OR NONPUBLIC SCHOOL MAY NOT USE PHYSICAL RESTRAINT ON A STUDENT AS A BEHAVIORAL HEALTH 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 BEEN DEMONSTRATED TO BE INEFFECTIVE.</p> <p>(B) (1) A PUBLIC AGENCY OR NONPUBLIC SCHOOL MAY NOT USE SECLUSION AS A BEHAVIORAL HEALTH INTERVENTION FOR A STUDENT UNLESS: (I) SECLUSION IS NECESSARY TO PROTECT THE STUDENT OR ANOTHER INDIVIDUAL FROM IMMINENT SERIOUS PHYSICAL HARM;</p>	<p>COMAR 13A.08.04.05</p> <p>A. Use of Restraint.(1) Physical Restraint. (a) Except as provided in §A(1)(b) of this regulation, the use of physical restraint is prohibited in public agencies and nonpublic schools until 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 inappropriate.</p> <p>B. Use of Seclusion. (1) Except as provided in §B(2) of this regulation, the use of seclusion is prohibited in public agencies and nonpublic schools until there is an emergency situation and seclusion 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 inappropriate.</p>	<p>The issue is already addressed in regulations.</p> <p>Proposed language is duplicative.</p> <p>The issue is already addressed in regulations. Proposed language is duplicative.</p>
<p>Page 4 Line 3</p> <p>(III) ONE OF THE FOLLOWING HEALTH CARE PRACTITIONERS, WHO IS CLINICALLY FAMILIAR WITH THE STUDENT AND HAS RECEIVED TRAINING IN ALL TOPICS REQUIRED UNDER COMAR 13A.08.04.06, IS ON SITE, DIRECTLY OBSERVING THE STUDENT DURING THE SECLUSION:</p> <p>1. A PHYSICIAN, LICENSED TO PRACTICE UNDER TITLE 14 OF THE HEALTH OCCUPATIONS ARTICLE;</p> <p>2. A PSYCHOLOGIST, LICENSED TO PRACTICE UNDER TITLE 18 OF THE HEALTH OCCUPATIONS ARTICLE; OR</p> <p>A CLINICAL SOCIAL WORKER, LICENSED TO PRACTICE UNDER TITLE 19 OF THE HEALTH OCCUPATIONS ARTICLE;</p>	<p>Not specifically addressed in COMAR by job titles.</p>	<p>The proposed language has a limited view of which professional disciplines have the expertise to provide this observation. Most nonpublic schools do not have a physician onsite, or might have one psychologist in the building at any given time.</p> <p>MANSEF recommends that the determination should be left to the IEP team and would be more inclusive of other professional disciplines</p>

		<p>such as nurses, Licensed Clinical Professional Counselor (LCPCs), and Board Certified Behavior Analysts (BCBAs) who all have received training in trauma informed care.</p> <p>We are concerned that personnel may resort to calling 911 which can be more traumatizing to a student than the interventions discussed in this bill.</p>
<p>Page 4 Line 17</p> <p>(V) IF THE DOOR TO THE ROOM IN WHICH THE STUDENT IS SECLUDED HAS A LOCKING MECHANISM, THE LOCKING MECHANISM MAY BE ENGAGED ONLY IF HELD IN PLACE BY AN INDIVIDUAL OR, IF OPERATED ELECTRONICALLY, MUST AUTOMATICALLY BE RELEASED, IN CASE OF AN ACTIVE FIRE ALARM:</p>	<p>COMAR 13A.08.04.05.B.3(b). The door of a seclusion room shall 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.</p>	<p>Duplication of portion of COMAR</p>
<p>Page 4 – line 22 - THE PERIOD OF SECLUSION LASTS THE LESSER OF: 30 MINUTES; OR A POINT IN TIME DURING WHICH THE STUDENT NO LONGER POSES A THREAT OF IMMINENT SERIOUS PHYSICAL HARM.</p>	<p>COMAR 13A.08.04.05.(6) A seclusion event:</p> <p>(a) Shall be appropriate to the student's developmental level and severity of the behavior;</p> <p>(b) May not restrict the student's ability to communicate distress; and</p> <p>(c) May not exceed 30 minutes.</p>	<p>The issue is already addressed in regulations. Proposed language is duplicative.</p>
<p>Page 5 – line 15</p> <p>THE REPORT REQUIRED UNDER THIS INCLUDE, FOR THE PRIOR SCHOOL YEAR, THE NUMBER OF PHYSICAL RESTRAINT INCIDENTS AND THE NUMBER OF SECLUSION INCIDENTS FOR EACH STUDENT WHO HAD AT LEAST ONE PHYSICAL RESTRAINT OR SECLUSION INCIDENT, DISAGGREGATED BY THE STUDENT'S JURISDICTION, DISABILITY, RACE, GENDER, AGE, AND TYPE OF PLACEMENT.</p>		<p>The current data collection is in adequate. MANSEF recommends that nonpublic special education schools be a partner in the development of a meaningful data collection.</p> <p>Our programs are not static entities and</p>

		referrals are made all throughout the school year. Simply collecting the data as proposed will not give an accurate picture and can be viewed negatively or unfavorably on a specific program, and also will not give helpful reflective information as intended.
Page 6 line 1 SPECIFIC POLICY CHANGES MADE TO REDUCE THE USE OF PHYSICAL RESTRAINT OR SECLUSION INCIDENTS DURING THE PRIOR SCHOOL YEAR;	COMAR 13A.08.04.06A Each public agency and nonpublic school shall annually review policies and procedures and provide them to school personnel and parents described in COMAR 13A.08.01	Already addressed in COMAR
Page 6 Line 28 WITHIN 30 DAYS OF SUBMITTING THE REPORT REQUIRED UNDER PARAGRAPH (1)(IV) OF THIS SUBSECTION, THE DEPARTMENT SHALL PUBLISH THE REPORT ON ITS WEBSITE		There needs to be an independent source (unbiased third party) to consult on data interpretation.
Page 7 Lines 2 - 9 SUBJECT TO THE REQUIREMENTS OF THIS SECTION, THE State Superintendent shall [consult], In CONSULTATION with representatives of institutions of higher education and the Professional Standards and Teacher Education Board under Title 6, Subtitle 7 of this article [with respect to the], ADOPT POSITIVE BEHAVIORAL INTERVENTION training requirements for teachers [and], administrators [to ensure that sufficient training is available regarding evidence-based], BEHAVIORAL HEALTH SPECIALISTS, PARAPROFESSIONALS, AIDES, AND ANY OTHER EMPLOYEES WHO INTERACT ROUTINELY WITH STUDENTS.		Does this include lunch room servers and facility workers, etc? MANSEF does not feel that individuals who have incidental and non-treatment based interactions with students should be covered in this legislation, as they would never implement the interventions discussed.