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State Superintendent of Schools

BILL:	Senate Bill 705	DATE:	March 2, 2022
SUBJECT:	Education – Physical Restraint and Seclusion – Limitations	COMMITTEE:	Education, Health, and Environmental Affairs
POSITION:	Support with Amendments		
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EXPLANATION:

The Maryland State Department of Education (MSDE) supports with amendments **Senate Bill (SB) 705 – Education – Physical Restraint and Seclusion – Limitations**, which prohibits the use of physical restraint and seclusion as behavioral interventions, except in specific circumstances. The bill adds data requirements to a current report, and adds a duty to investigate instances when one student is physically restrained or secluded more than 10 times in a school year.

Research consistently shows that there is no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques.¹ The MSDE supports the provisions of this bill that will reduce the use of the techniques, but expresses a strong request to the committee to strengthen the proposal in critical ways.

There is no place in Maryland’s schools for the use of seclusion. MSDE supports the provisions of this bill that eliminate the practice in local school systems, but the bill does not go far enough. By excluding non-public schools from this ban on seclusion, the State will leave students in those schools vulnerable to abuse.

All but the most limited forms of restraint, in the most extreme and rare situations, should also be banned in Maryland’s schools. MSDE appreciates the portion of the bill that codifies existing regulations² by limiting the situations in which restraint can be used to those in which it is necessary to protect the student or another individual from imminent serious physical harm and other, less intrusive nonphysical interventions have failed or been demonstrated to be inappropriate for the student. However, the bill should also include clear parameters around the types of restraint that cannot be used in any case. For your reference, a bill before the United States Congress lays out strong and clear definitions of physical restraint that outlines the variety of restraints that cannot and should not be used in schools.³ MSDE believes that this proposed federal definition and list of prohibitions, as well as existing Maryland COMAR 13A.08.04.05(A)(1)(f) prohibitions, should be explicitly adopted within the bill.⁴

¹ U.S. Gov’t Accountability Office, GAO-09-719T, Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers, page iii

² <http://mdrules.elaws.us/comar/13a.08.04.05>

³ https://edlabor.house.gov/imo/media/doc/BEYER_142_xml.pdf

⁴ <http://mdrules.elaws.us/comar/13a.08.04.05>

Accountability and corrective action is important in making progress on this issue. As a first step, the MSDE supports the bill's provisions to add to the current collection of the data in ways that will enable further disaggregation, require local school systems to review student cases in public and nonpublic schools if a student is physically restrained more than 10 times in a school year, and increase MSDE involvement in the provision of training and professional development regarding positive behavioral interventions. However, MSDE believes that there needs to be stronger accountability measures for (i) schools that violate the provisions of the bill, and the school systems in which they operate and (ii) schools in which students are restrained 10 or more times and the school systems in which they operate, including a requirement for a systemic, evidence-based corrective action plan.

It is within that framework that MSDE requests the following amendments that will:

1. With regard to restraint:
 - a. Define physical restraint as a personal restriction that immobilizes or reduces the ability of an individual to move the individual's arms, legs, torso, or head freely.
 - b. Add a section listing explicitly the types of restraints that cannot be used under any circumstances, drawing on existing COMAR regulation and the federal proposal referenced above; and
 - c. Strike all provisions in the bill that describe conditions where restraint is permissible, except for the provision regarding its necessity to protect the student or others from serious and imminent harm.
2. With regard to seclusion:
 - a. Ensure that nonpublic schools are included in all references where seclusion is prohibited, beginning with the references on page 3, line 13.
 - b. Strike all provisions in the bill that describe conditions where seclusion is permissible; and
 - c. Add to the definition of seclusion, "except that such term does not include a time out" and add the definition of "time out" found on page 9-10 the federal proposal.⁵
3. With regard to accountability and data collection:
 - a. Add a requirement for a systemic, evidence-based corrective action plan to be submitted to MSDE for schools that (i) violate the provisions of the bill and the school systems in which they operate and (ii) schools in which students are restrained 10 or more times and the school systems in which they operate.

This bill takes an important initial step to move towards eliminating the use of restraint and seclusion techniques in Maryland's schools. However, MSDE believes that the research indicates a more complete effort is appropriate and necessary at this time.

We respectfully request that you consider this information as you deliberate **Senate Bill 705**. Please contact Ary Amerikaner, at 410-767-0090, or ary.amerikaner@maryland.gov, for any additional information.

⁵ <https://www.murphy.senate.gov/imo/media/doc/kassa.pdf>