

Education Advocacy Coalition

for Students with Disabilities

HOUSE WAYS AND MEANS COMMITTEE

SENATE BILL 705

EDUCATION—PHYSICAL RESTRAINT AND SECLUSION—LIMITATIONS, REPORTING, AND TRAINING

MARCH 31, 2022

POSITION: SUPPORT

The Education Advocacy Coalition for Students with Disabilities (EAC), a coalition of approximately 40 organizations and individuals concerned with education policy for students with disabilities in Maryland, strongly supports Senate Bill 705, which would 1) prohibit the use of seclusion in public schools and further regulate its use in nonpublic special education schools; 2) require collection of additional data about the use of restraint and seclusion with students in public and nonpublic schools, 3) require analysis of that data; 3) require the Maryland State Department of Education to develop an accountability system to ensure that the strong regulations and guidance in place in Maryland are implemented fully, and 4) would increase the ability of school staff to better meet the needs of their students by addressing gaps in professional development, thereby reducing the reliance on restraint and seclusion, an outdated means of behavior management. As was discussed at length during the hearings on Senate Bill 786 and its companion House Bill in 2017 and in hearings on legislation proposed in 2020 and 2021, restraint and seclusion can be aversive, trauma-inducing and dangerous, often resulting in injury to students and sometimes to school staff as well. On occasion, including in Maryland, these interventions can be fatal.

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 1st 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 four reports from MSDE covering the 2017-18, 2018-19, 2019-20 and 2020-21 school years. The incidence of restraint and seclusion remains extremely high in many jurisdictions. 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. In fact, the United States Department of Justice concluded a lengthy investigation recently, entering into an agreement with Frederick County that requires the immediate cessation of the use of seclusion and a host of other corrective actions, both student-oriented and systemic. 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. This was no different in the 2019-20 school year, when 530 of the 778 ((68%) restraint incidents and 75% of the seclusion incidents in Montgomery County involved students of color. Also notable is that in the 2019-20 school year, the year in which school buildings closed in mid-March because of the coronavirus pandemic, the number of restraint incidents increased in Baltimore City, Garrett County, Harford County and Worcester County, and the number of seclusion incidents increased in Allegany County, Baltimore County, Dorchester County, Montgomery County, Washington County, and Worcester County. 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. Notably, students in nonpublic special education schools are also restrained and placed in seclusion at a high rate. Also notable is that several local school systems (Anne Arundel County, Baltimore City, Caroline County, Prince George's County, Somerset County and Wicomico County) prohibit the use of seclusion, as do a number of nonpublic special education schools that serve students with complex disabilities.

Senate Bill 705 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. 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. In addition to the data already required to be reported to MSDE by local school systems, public agencies and nonpublic schools, Senate Bill 705 would require reporting of individual student data from a student's school to the local school system and to MSDE if a student is restrained (or secluded if in a nonpublic school) 10 or more times in a school year. Senate Bill 705 would also require MSDE to verify the data and to develop an accountability system to ensure compliance 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 additional training, Senate Bill 705 recognizes and makes a more robust effort to address this issue.

For these reasons, the EAC supports Senate Bill 705. For more information, please contact Leslie Seid Margolis, Chairperson, at lesliem@disabilityrightsmd.org or 410-370-5730.

Respectfully submitted,

Rene Averitt-Sanzone, The 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.
Rich Ceruolo, Parent Advocacy Consortium
Michelle Davis, ABCs for Life Success
Jennifer Engel Fisher, Weinfeld Education Group, LLC
Ann Geddes, Maryland Coalition of Families
Kalman Hettleman, Independent Advocate
Morgan Horvath, M.Ed., Abilities Network
Rosemary Kitzinger and Marjorie Guldan, Bright Futures, LLC
Rachel London, Maryland Developmental Disabilities Council
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
Ronza Othman, National Federation of the Blind of Maryland
Maria Ott, Attorney
Rebecca Rienzi, Pathfinders for Autism
Jaime Seaton, BGS Law
Ronnetta Stanley, Loud Voices Together
Guy Stephens, Alliance Against Seclusion and Restraint
Maureen van Stone, Mallory Legg, and Alyssa Thorn, Project HEAL at Kennedy Krieger Institute
Daya Chaney Webb, IMPACT Advocacy
Liz Zogby, Maryland Down Syndrome Advocacy Coalition
Also joining testimony: Shanetta Martin, Maryland Education Coalition