



MONTGOMERY COUNTY BOARD OF EDUCATION

Expanding Opportunity and Unleashing Potential

850 Hungerford Drive ♦ Room 123 ♦ Rockville, Maryland 20850

BILL: HB1166
TITLE: Education – Physical Restraint and Seclusion – Requirements, Reporting, and Training
DATE: 3/30/2021
POSITION: OPPOSE
COMMITTEE: Ways and Means
CROSSOVER: Education, Health, and Environmental Affairs
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The Montgomery County Board of Education (Board) **opposes** HB1166.

- Local education agencies in the state of Maryland are currently permitted to use restraint and/or seclusion in three circumstances in accordance with Code of Maryland Regulations (COMAR) 13A.08.04.05, which include circumstances when:
 - There is an emergency situation and 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;
 - The student's behavioral intervention plan (BIP) or Individualized Education Program (IEP) describes the specific behaviors and circumstances in which physical restraint may be used; or
 - The parents of a nondisabled student have otherwise provided written consent to the use of physical restraints while a behavior intervention plan is being developed.
- The proposed legislation creates a restriction that physical restraint or seclusion may not be used by a public agency or nonpublic school as a “behavioral health intervention” which is undefined. This vague definition of when physical restraint or seclusion may be used appears to eliminate the ability of IEP teams to determine that use of a restraint or seclusion may be a necessary component of the student’s IEP and/or BIP based upon their unique needs and behavioral challenges. Furthermore, it removes the ability of parents to provide consent during the interim period of development of a BIP.
- HB 1166 eliminates the current requirements in COMAR which refers to an “emergency situation” and which requires that the other less intrusive, nonphysical intervention have “failed or been determined inappropriate.” Instead there is no reference to the emergency situation requirement and the other interventions only need to be ineffective rather than have failed or been determined inappropriate. The new language appears to set forth a lesser standard for the serious nature of when restraint or seclusion should be used and fails to emphasize that it must be used as a last resort. These changes to the current COMAR requirements also are inconsistent with the current Maryland State Department of Education (Technical Assistance Bulletin, Student Behavior Interventions: Restraint and Seclusion, and Addendum, Student Behavior Interventions: Physical Restraint and Seclusion Supplement on Students with Disabilities).

- In addition to the requirements referenced above, prior to the use of seclusion as a “behavioral health intervention,” the public agency is required to have an onsite observation from a licensed physician, psychologist, or clinical social worker who is trained in the legal requirements of COMAR and who is familiar with the student. It is unclear if the burden is on the school district to contract with these licensed medical professionals to ensure that they are onsite for an observation. Furthermore, for students with IEPs, a risk assessment that the use of seclusion is not contraindicated is required to be completed annually. It is unclear if the onus is on the parent/guardian or on the public agency to obtain this information.
 - If the burden lies with the school district, then local education agencies (LEAs) would be required to obtain parental consent to disclose any confidential and/or personally identifiable information of the student consistent with the legal requirements of the Individuals with Disabilities Education Act (IDEA) and the Family Educational Rights and Privacy Act (FERPA). This proposed legislation does not account for situations in which the parent may refuse to provide written consent for the risk assessment or in which a parent may revoke a previous written consent. If the school district is unable to obtain parental consent for a risk assessment, then there is an enhanced risk of safety to the student, other students, and staff members who would be unable to use seclusion when necessary to prevent imminent danger or harm.
 - If obtaining the risk assessment is the responsibility of the parent/guardian, then the proposed legislation does not account for the costs associated with engaging a medical professional and that not all parents/guardians may have means, finances or medical insurance to access such professionals. Additionally, the parent cannot be legally required to provide copies of privately obtained medical reports.
- A risk assessment that the use of seclusion is not contraindicated is required to be completed as part of each annual review meeting for students with IEPs.
 - IDEA requires LEAs to “in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.” LEAs also are required to review the student’s IEP at least once annually to measure student progress and to ensure the appropriateness of the student’s IEP. Therefore, this vague provision may cause confusion with existing legal obligations to ensure the effectiveness of behavioral interventions outlined in the student’s IEP.
 - The contraindications of the use of seclusion are already addressed in the COMAR requirements, which include “Review available data to identify any contraindications to the use of seclusion based on medical history or past trauma, including consultation with medical or mental health professionals as appropriate.” The ability to consult with appropriate medical professionals and to obtain relevant medical information from the parent/guardian is more accessible to IEP teams and does not hinder/delay their ability to have efficient and effective annual review meetings.
 - It is unclear whether the medical professional who conducted the risk assessment must attend the IEP team meeting. Typically, when there is an assessment to be reviewed during the IEP team meeting, the assessor must attend. MCPS does not currently employ any medical doctors. This provision would pose an additional

burden on the school psychologists and social workers to attend additional meetings and take away from the time spent directly supporting student's social, emotional and behavioral needs to access their educational programming.

- The proposed legislation has the effect of causing a delay in the use of seclusion, when appropriate to avoid the risk of imminent harm or danger, by requiring school districts to obtain the authorization from a medical professionals. As school psychologists are assigned to multiple schools and social workers are limited to the schools with Social and Emotional Special Education Services (SESES) programs, they are not readily available to be onsite for observations.
- HB1166 mandates that the school district rely upon the opinions of medical professionals when making educational decisions affecting the safety and well-being of students. Although licensed physicians, or psychologists, or clinical social workers are highly qualified in their respective professions, the language of the proposed legislation negates the knowledge, skills, and expertise of educational professionals already knowledgeable about the student and qualified in the use of appropriate positive behavioral supports and interventions. Restraint and seclusion is only used when necessary to protect a student, or other students, from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate. Crisis Prevention Institute training, which is provided for MCPS staff members, focuses on specific strategies to de-escalate behavior as an alternative to restraint and/or seclusion.
- The current legal requirements of COMAR13A.08.04.05(C)(2), "if restraint or seclusion is used for a student with a disability, and the student's IEP or behavior intervention plan does not include the use of restraint or seclusion, the IEP team shall meet, in accordance with COMAR 13A.08.03, within 10 business days of the incident." HB1166 requires that if the student's behavior is adversely affected after being placed in seclusion, then the IEP team must convene an "at the earliest opportunity to discuss alternative behavioral health treatments." This terminology is less specific than the current COMAR requirements. The lack of a finite period in which the IEP team meeting should be held prevents the schools staff, parents, and students (if age appropriate) from having clear expectations of when an IEP team is required to occur. It also affects the ability of the IEP team to appropriately coordinate schedules with the parent/guardian and all required IEP team members. Additionally, this requirement does not contemplate the intersection with the school district's legal requirement to provide all documentation to be discussed during the IEP team meeting five business days prior to the IEP team meeting. The same is true for the Pupil Personnel Meeting for general education students.
- HB1166 requires the Maryland State Department of Education (MSDE) to provide training to all administrators, teachers, behavioral support specialists, paraprofessionals, aids, or other personnel who directly work with the student. COMAR 13A.08.04.06(C)(1) already requires that "each public agency and nonpublic school shall provide professional development to designated school personnel." As such, MCPS provides CPI training to designated staff members. The additional training to be provided by MSDE would be a duplication of the training already provided. Furthermore, to provide consistency of message, MCPS would continue with the strategies and interventions outlined in its purchased CPI training.

For these reasons, the Board **opposes** this legislation and urges a unfavorable report.