

HB1166_KennedyKrieger_Support_R&S_SENATE.pdf

Uploaded by: Arneson, Emily

Position: FAV



DATE: March 30, 2021 **COMMITTEE:** Senate Education, Health and Environmental Affairs
BILL NO: House Bill 1166
BILL TITLE: Education – Physical Restraint and Seclusion – Reporting and Training
POSITION: Support

Kennedy Krieger Institute supports House Bill 1166 – Physical Restraint and Seclusion –Reporting and Training

Bill Summary:

Each public agency and nonpublic school is currently required to annually submit a report to the Maryland State Department of Education (MSDE) outlining the number of physical restraint and seclusion incidents. House Bill 1166 takes that data reporting further, adding extra metrics and reporting requirements. Public agencies and nonpublic schools must also report on the steps the school has taken to encourage positive behavioral interventions. The bill requires MSDE to analyze data reporting the use of physical restraint and seclusion in schools and make recommendations on policy changes and professional development opportunities. Additionally, the MSDE, in consultation with representatives of higher education and Professional Standards and Teacher Education Board, will adopt positive behavioral training requirements for all employees who routinely interact with students.

Background:

Section 7-1102.1 of the Education Article of the Annotated Code of Maryland requires the MSDE to report annually on the findings and recommendations of data collected by public and nonpublic schools on the use of physical restraint and seclusion.

Data are currently collected using an online survey for reporting: (1) Number of physical restraints and seclusion incidents, disaggregated by the student's jurisdiction, disability, race, gender, age, and type of placement; and (2) Professional development provided to designated school personnel related to positive behavioral interventions, strategies, supports, and trauma-informed interventions.

While these reports are welcome in providing transparency in school use of physical restraint and seclusion, they do not provide for an analysis which the MSDE can use to formulate guidance, professional development, and accountability, which would result in a decrease in the use of these interventions. Further these reports do not include critical information including the many types of physical restraint, which can range very broadly in restrictiveness or durations, and are essential in understanding any use of physical restraint. Duration of seclusion, also a crucial portion of data, is also not included.

Rationale:

Kennedy Krieger Institute is home to a nationally recognized “Blue Ribbon School of Excellence” comprehensively committed to providing innovative special education and clinical services for children, adolescents and young adults with a wide range of learning, emotional, physical, neurological and developmental disabilities.

Our mission is to enable students to reach their potential academically, socially and behaviorally. We are committed to protecting all students and staff, ensuring that they share a safe environment to learn and grow. It is this commitment that requires us to provide our support in the effort to adequately and carefully regulate the use of physical restraint and seclusion.

Physical restraint and seclusion are serious, last-resort techniques for ensuring safety. Each must be carefully designed and implemented by highly trained staff. The use of these interventions must be immediately

balanced against the risk of failing to intervene in the presence of imminent danger to a person. Efforts to improve safety for students, when the balance of risk requires this use, must be supported.

The enhanced collection and use of data to increase student safety is critical in the effort to reduce these procedures. It is essential that MSDE's division of Student Support, Academic Enrichment and Educational Policy be provided the resources, financial and structural, to support this mission. Expanded data collection and the beginning of meaningful analysis will allow MSDE to develop guidance, professional development opportunities, and accountability regarding restraint and seclusion. Kennedy Krieger has met with the highly committed professionals in this agency, critical to student safety, and we understand they must be given the tools, both in personnel and infrastructure they request. An unfunded mandate will not provide what all students need.

Lastly, requiring public agencies and nonpublic schools to review, improve, and report efforts to reduce the use of physical restraint and seclusion is the logical next step in any effort improving services. Kennedy Krieger employs an internal Continuous Quality Improvement (CQI) process, based on literature from clinical settings using physical restraint and seclusion, to review all aspects of the use of restraint and seclusion in our schools. This review includes types of physical restraints, durations of interventions, as well as the comparison of trends within and across years both for individual students and student cohorts. This process is critical in understanding our success or failure in treating and educating our students. A state-wide process with the initial steps required for the analysis of these interventions should not be envisioned as a punishment for schools serving students who may present behavior requiring restraint and seclusion. Rather, it must be envisioned and supported as a state-wide CQI effort to reduce the use of physical restraint and seclusion with each individual student. Every program in Maryland would benefit from the discussion and dissemination of this work.

In consideration of all these critical issues Kennedy Krieger Institute requests a favorable report on House Bill 1166.

DRM testimony.pdf

Uploaded by: Berger, Megan

Position: FAV



Empowerment. Integration. Equality.

1500 Union Ave., Suite 2000, Baltimore, MD 21211

www.DisabilityRightsMD.org

Phone: 410.727.6352

SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE

HOUSE BILL 1166

EDUCATION—PHYSICAL RESTRAINT AND SECLUSION—REPORTING AND TRAINING

MARCH 30, 2021

POSITION: SUPPORT

Disability Rights Maryland (DRM) is the protection and advocacy organization for the state of Maryland; the mission of the organization, part of a national network of similar agencies, is to advocate for the legal rights of people with disabilities throughout the state. Over the years, DRM has dedicated significant resources to representation of children with disabilities in special education matters, both individual and systemic, and to educational policy work. As the protection and advocacy for Maryland, DRM has the unique authority to investigate when a child, youth or adult with disabilities has been, or is at risk of being, abused or neglected. Our special education work and our core protection and advocacy authority come together when children with disabilities are subjected to the use of restraint and seclusion. DRM has investigated a number of school-based restraint and seclusion injuries, and it has been this work that has informed our policy work since the 2002 General Assembly session that enacted Maryland's first law governing the use of restraint and seclusion in schools.

DRM, as a member and the chair of the Education Advocacy Coalition (EAC), joins the testimony submitted by the EAC in support of House Bill 1166. We submit separate testimony for two reasons. First, we want to underscore the importance of enacting legislation to require data analysis, the development of an accountability system by the Maryland State Department of Education (MSDE), and the importance of involving the institutions of higher education in discussions to ensure that teachers are better-trained to meet the needs of students in their classrooms. Second, we want to share the stories of several clients.

It was our hope that the enactment of Senate Bill 786, stronger regulations and the strong guidance issued by MSDE would lead to a reduction in the use of restraint and seclusion. Unfortunately, this has not been the case. House Bill 1166 would address the underlying barriers that have prevented progress. House Bill 1166 requires analysis of the data required by Senate Bill 786, rather than simply a transmittal of the data as currently occurs each December 1st, and also requires MSDE to look for trends or patterns in the use of restraint and seclusion use and to develop an accountability system designed to reduce the use of these aversive interventions. Additionally, House Bill 1166 requires MSDE to consult with higher education institutions and to address professional development more robustly, which will enable teachers to be better prepared to meet the academic and behavioral needs of the students in their classrooms. This should all lead to less reliance on restraint and seclusion.

Ideally, this Committee would hear from students who have experienced restraint and seclusion. However, the reality is that restraint and seclusion in Maryland are used disproportionately with very young children, primarily children in elementary school but even with children as young as three and four years old, children who are too young to testify. Additionally, restraint and seclusion in Maryland are used disproportionately with children with disabilities, many of whom are unable to communicate what has happened with them. And the reality is that many children who have been restrained or

secluded are too traumatized by their experience to talk about it. Therefore, we offer snapshots of several of our clients who are unable to come and tell you their stories themselves.

“Noah” is a second-grade student with attention deficit hyperactivity disorder who was secluded and restrained more than 160 times in the course of a school year. His IEP team relied on restraint and seclusion instead of considering less restrictive interventions. Noah was traumatized by these restraint and seclusion incidents, and he also suffered bruising during some of the restraints. During one eight minute long restraint, he cried out to staff “You’re choking me.”

“Adam” is a nonverbal sixth grader with autism who was restrained and secluded more than 100 times. At a minimum, he was secluded three times a day; at most, he was secluded 10 times a day for 29 minutes each time. He came home from school with scratches on his back, shoulders and wrists and began to harm himself by punching himself in the head as the school year progressed. Once the school system brought in a behavioral specialist who developed a plan for him and focused on providing him with a way to communicate effectively, things significantly improved.

“Trevor” is a nine year old child with disabilities who at the age of eight was restrained and secluded more than 128 times in a three month period, causing him to be removed from his classroom for a total of 82 hours. So traumatized by these incidents that he could not return to school, he remained on home and hospital instruction until he was placed in a nonpublic special education school. In its decision resolving a complaint filed by DRM on Trevor’s behalf, MSDE found violations of the restraint and seclusion regulations.

“Carlo” is a 14 year old foster child who, at the age of seven when DRM began to represent him, had been restrained more than 147 times. He was then placed in a therapeutic public school program in which, despite a medical contraindication to the use of seclusion because of his history of extreme abuse and neglect, was secluded 57 times in the first 2 ½ months of the school year; the seclusion ended only because his foster mother withdrew him from school after he was injured during a seclusion incident. A complaint to MSDE resulted in findings of numerous violations of the restraint and seclusion regulations. Carlo was placed in a series of nonpublic special education schools and now resides in a residential program in Maryland, having narrowly avoided placement out of state.

There is no question that restraint and seclusion are dangerous. Over the years, DRM has handled cases involving children restrained by duct tape, neckties, or in equipment meant for children who cannot sit independently. DRM has investigated cases of children physically restrained and placed in seclusion for time periods well beyond the limits imposed by the regulations. We have investigated cases involving children who have sustained broken bones in seclusion rooms, and children who have sustained bruises, cuts, rug burns, and other injuries during restraint and seclusion. We have also conducted investigations of children who died while in restraint while placed in residential school programs. Those are the visible injuries. The damage caused by invisible injuries—the trauma sustained by each child subjected to restraint or seclusion—and the trauma sustained by those who witness it and those who engage in it, is incalculable.

House Bill 1166 is the necessary next step in moving forward to reduce the use of these aversive interventions and to ensure that school is the nurturing, safe learning haven it is meant to be for all children. For more information, please contact Leslie Seid Margolis at lesliem@disabilityrightsmd.org or 410-370-5730.

HB1166 (MSC Testimony).pdf

Uploaded by: DiPietro, Jonathon

Position: FAV



Mr. Jonathon DiPietro, Director
Mr. Hunter Craig, Assistance Director
Mr. Christopher Lidard, Outreach Coordinator
Ms. Lauren Raskin, Outreach Coordinator

BILL: **HB1166 - Education - Physical Restraint and Seclusion - Reporting and Training**

SPONSOR: **Delegate Eric Ebersole**

POSITION: **FAVORABLE**

Friday, March 26, 2021

HB 1166

Chair Pinsky, Vice Chair Kagan, and Members of the Education, Health and Environmental Affairs Committee. We are writing in favor of House Bill 1166.

The Maryland Student Coalition supports any efforts that advance positive behavioral intervention practices and improve the professional infrastructure that allows educators to utilize these practices. The uses of seclusion and restraint have been proven to be cruel and unnecessary forms of punishment and/or classroom management that are often ineffective in nearly all situations. Especially since other institutions such as private schools are already prohibited from these practices, it is imperative that Maryland's public schools come to alignment. Moreover, the bill's provisions that put effort behind training, reporting, and analysis of data show a bold commitment to the proper implementation of such an important policy.

As an organization made up of current high school students, our members have witnessed a revolution in restorative discipline and behavioral intervention since our entrance into Maryland's public schools. This bill continues that trend of removing archaic and harmful practices in favor of strategies that respect the dignity of every single student. Students with disabilities and learning challenges, often the students in most need of positive support, are the most affected by this bill, and will benefit the most from its passage. It is time for Maryland to join the movement towards more humane intervention discipline practices in our schools.

For the reasons stated above, we urge the committee to issue a favorable report on HB1166.

EHEA.HB1166.DDCouncil.Support.pdf

Uploaded by: London, Rachel

Position: FAV



Maryland Developmental Disabilities Council

Senate Education, Health, and Environmental Affairs Committee

HB 1166: Education – Physical Restraint and Seclusion – Reporting and Training

Position: Support

State data demonstrate that restraint and seclusion are used disproportionately with students who have disabilities. Data from the most current report available from Maryland State Department of Educationⁱ shows:

- Restraint was used a total of 12,310 times. 59% of the incidents involved students with disabilities.
- Seclusion was used a total of 6,487 times. 57% of the incidents involved students with disabilities.
- 97% of seclusion incidents and 89% of restraint incidents happened to students in special education settingsⁱⁱ, compared to only 3% and 11%, respectively in general education settings.

The data clearly show Maryland’s over 105,000 students with disabilities are at a greater risk of restraint and seclusion. This is despite the fact 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.”ⁱⁱⁱ

According to the U.S. Department of Education’s resource document on restraint and seclusion, restraint and seclusion should never be used except in situations in which a student’s behavior poses imminent danger of serious physical harm to self or others.

Despite regulations and policy, many Maryland local school systems and many of its nonpublic schools rely too heavily on restraint and seclusion as routine ways of attempting to manage student behavior instead of treating them as the truly rare, emergency interventions they are meant to be. House Bill 1166, as amended, addresses this problem by requiring accountability and addressing some of the gaps that have been illuminated by three years of the reporting requirements.

WHAT does this bill do?

- Requires MSDE to develop an accountability structure and to take responsibility for reducing the use of restraint and seclusion in public and nonpublic schools
- Ensures all teachers and administrators and the staff who work with students on a daily basis receive sufficient professional development regarding evidence-based positive behavior interventions and supports and trauma-informed interventions

Addressing gaps in teacher preparation and professional development and increasing the ability of school staff to better meet the needs of their students will ultimately help reduce the reliance on restraint and seclusion as a tool of classroom management. The discussion about the use of restraint and seclusion should begin with efforts to make learning environments safe and ensure students have the supports and services needed so that restraint and seclusion are unnecessary, therefore, this professional development is critical. For all these reasons, the Maryland DD Council supports HB 1166.

Contact: Rachel London, Executive Director: RLondon@md-council.org

ⁱ Data reported for the 2019-2020 school year <http://dlslibrary.state.md.us/publications/Exec/MSDE/ED7-1102_2020.pdf>.

ⁱⁱ Special education settings include separate classes, public/private separate day schools, and residential settings.

ⁱⁱⁱ U.S. Department of Education, *Restraint and Seclusion: Resource Document* <www.ed.gov/policy/restraintseclusion>, May 2012.

EACtestimony.HB1166Senate.pdf

Uploaded by: Margolis, Leslie

Position: FAV

Education Advocacy Coalition For Students with Disabilities

SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE HOUSE BILL 1166: EDUCATION—PHYSICAL RESTRAINT AND SECLUSION—REPORTING AND TRAINING

March 30, 2021

The Education Advocacy Coalition for Students with Disabilities (EAC), a coalition of more than 30 organizations and individuals concerned with education policy for students with disabilities in Maryland, strongly supports House Bill 1166, which would 1) require the collection of additional data regarding the use of restraint and seclusion; 2) require the Maryland State Department of Education (MSDE) to develop an accountability system to measure compliance by local school systems and nonpublic schools with state regulations regarding the use of restraint and seclusion and to analyze data collected about the use of restraint and seclusion to determine trends and patterns; and 3) 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 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 three reports from MSDE covering the 2017-18, 2018-19 and 2019-20 school years. The incidence of restraint and seclusion remains extremely high in many jurisdictions. For example, during the 2019-20 school year, which was cut short by school building closures in mid-March because of the coronavirus pandemic, Harford County reported 547 restraint incidents, an *increase* over the previous full school year’s total of 486

restraint incidents. Harford County reported a total of 1153 seclusion incidents during the 2018-19 school year and seemed likely to surpass that number during the 2019-20 school year, having reached a total of 817 incidents when school buildings closed. Similarly, Baltimore County reported 926 restraint incidents during the abbreviated in-person 2019-20 school year, close to the previous full school year's total of 1053 incidents. Baltimore County reported 330 incidents of seclusion during the 2019-20 school year, substantially *more* than the 2018-19 total of 218. Other local school systems also reported increased numbers.

Many local school systems disproportionately restrain and seclude students of color. For example, during the 2019-20 school year in Baltimore County, 665 of the 926 restraint incidents (72%) and 225 of the 330 seclusion incidents (68%) involved students of color and in Howard County, 515 of the 616 restraint incidents (84%) and 116 of the 132 seclusion incidents (88%) involved students of color.

Across all districts, the vast majority of students who are restrained and placed in seclusion are students with disabilities, the majority are in elementary school, and the majority are boys.

Despite strong regulations and policy, many Maryland local school systems and many of its nonpublic schools simply rely too heavily on restraint and seclusion as routine ways of attempting to manage student behavior instead of treating them as the truly rare, emergency interventions they are meant to be. 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 1166 would require the Department to analyze the data collected to determine trends and patterns, verify data and make recommendations.

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 1166 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 was 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 1166 recognizes and makes a more robust effort to address this issue.

For these reasons, the EAC supports House Bill 1166. For more information, please contact Leslie Seid Margolis, Chairperson, at lesliem@disabilityrightsmd.org or 410-370-5730.

Respectfully submitted,

Selene A. Almazan, Selene Almazan Law, LLC
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
Lisa Frank, Andrea Bennett and Jen Ritchotte, Special Kids Company
Ann Geddes, Maryland Coalition of Families
Beth Ann Hancock, Charting the Course, LLC
Kalman Hettleman, Independent Advocate
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
Lori Scott, The Arc Maryland
Jaime Seaton, McDonough Law
Karleen Spitulnik, Ginger Hanson and Winifred Winston, Decoding Dyslexia Maryland
Ronnetta Stanley, M.Ed., Loud Voices Together
Guy Stephens, Alliance Against Seclusion and Restraint
Wayne Steedman, Steedman Law Group, LLC
Maureen van Stone, Project HEAL at Kennedy Krieger Institute
Jessica Williams, M. Ed., Education Due Process Solutions

HB 1166 - Support - MPS WPS (Sentate).pdf

Uploaded by: Tompsett, Thomas

Position: FAV



March 26, 2021

The Honorable Paul G. Pinsky
Senate Education, Health, & Environmental Affairs Committee
2 West, Miller Senate Office Building
Annapolis, Maryland 21401

RE: Support – HB 1166: Education – Physical Restraint and Seclusion – Requirements, Reporting, and Training

Dear Chairman Pinsky and Honorable Members of the Committee:

The Maryland Psychiatric Society (MPS) and the Washington Psychiatric Society (WPS) are state medical organizations whose physician members specialize in diagnosing, treating, and preventing mental illnesses, including substance use disorders. Formed more than sixty-five years ago to support the needs of psychiatrists and their patients, both organizations work to ensure available, accessible, and comprehensive quality mental health resources for all Maryland citizens; and strives through public education to dispel the stigma and discrimination of those suffering from a mental illness. As the district branches of the American Psychiatric Association covering the state of Maryland, MPS and WPS represent over 1000 psychiatrists and physicians currently in psychiatric training.

MPS and WPS support House Bill 1166: Education – Physical Restraint and Seclusion – Requirements, Reporting, and Training (HB 1166) as amended. The physical and mental health of students, especially those who may be experiencing a mental health crisis, is paramount, which HB 1166 seeks to ensure. HB 1166 wisely promotes trauma-informed and positive behavior interventions, which are sound approaches to student behavior issues. HB 116 also creates sound policies through the data collection that is mandated in the bill and then placed in the purview of the State Superintendent of Schools for consideration and uniform action if necessary.

MPS and WPS would then ask the committee for a favorable report of HB 1166. If you have any questions with regard to this testimony, please feel free to contact Thomas Tompsett Jr. at tommy.tompsett@mdlobbyist.com.

Respectfully submitted,
The Maryland Psychiatric Society and the Washington Psychiatric Society
Joint Legislative Action Committee

HB 1166. Background and FAQs on Restraint and Seclu

Uploaded by: Woolums, John

Position: FAV



**STUDENT BEHAVIOR INTERVENTIONS:
RESTRAINT AND SECLUSION**

Issue Date: July 22, 2019

Reference: Md. Educ. Art. §7-1101—7-1104

COMAR 13A.08.04—*Student Behavior Interventions*

Background

In 2017, the Maryland General Assembly enacted Senate Bill 786 (201 Md. Laws, Chapter 611) *Education—Restraint and Seclusion—Consideration and Reporting*, which required consideration of the following: (1) the circumstances under which, and the types of schools in which, restraint and seclusion shall be prohibited; (2) contraindications for restraint and seclusion and who may authorize restraint and seclusion; (3) definitions of “positive behavior interventions, strategies, and supports” “behavior intervention plan”, and “trauma informed interventions”; (4) professional development requirements for school staff regarding behavioral interventions; (5) minimum requirements for policies and procedures to be developed by local school systems, public agencies, and nonpublic schools; and (6) standards for monitoring compliance by local school systems, public agencies, and nonpublic schools. These considerations were addressed by a taskforce that was convened by the Maryland State Department of Education (MSDE). As a result, revisions to COMAR 13A.08.04 were recommended and adopted by the State Board of Education in June 2018.

Introduction

The MSDE developed this document to provide guidance to local school systems, public agencies, and nonpublic schools to answer frequently asked questions regarding restraint and seclusion regulations (COMAR 13A.08.04—*Student Behavior Interventions*) adopted by the State Board of Education on June 20, 2018. This is a companion document for the Division of Early Intervention and Special Education Services’ Technical Assistance Bulletin on *Student Behavior Interventions: Physical Restraint and Seclusion Supplement on Students with Disabilities*. Although exclusion is also addressed in COMAR 13A.08.04, there were no changes to those COMAR regulations and they are only minimally referenced in this document. These questions and responses are not meant to be all inclusive. As local school systems, public agencies, and nonpublic schools implement COMAR 13A.08.04, additional questions may arise. Questions may be directed to the contact identified at the end of this document.

What are the Major Definitions Guiding COMAR 13A.08.04?

The major definitions guiding COMAR 13A.08.04 are as follows:

Physical Restraint: A personal restriction that immobilizes or reduces the ability of a student to move the student’s torso, arms, legs, or head freely. Physical restraint does not include: (1) briefly holding a student to calm or comfort the student; (2) a physical escort, which is the temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purposes of inducing a student who is acting out to walk to a safe location; (3) moving a disruptive student who is unwilling to leave the area if other methods such as counseling have been unsuccessful; or (4) intervening in a fight in accordance with Education Article §7-307, Annotated Code of Maryland.

Positive Behavior Interventions, Strategies, and Supports: School-wide and individual application of data-driven, trauma-informed actions, instruction, and assistance to promote positive social and emotional growth while preventing or reducing challenging behaviors in an effort to encourage educational and social emotional success.

Seclusion: The involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. Seclusion does not include a timeout, which is a behavior management technique that is part of an approved program that involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming. Seclusion is not exclusion, which is the removal of a student to a supervised area for a limited period of time during which the student has an opportunity to regain self-control and is not receiving instruction, including special education, related services, or support.

Trauma-Informed Intervention: An approach that is informed by the recognition of the impact that trauma, including violence, abuse, neglect, disaster, terrorism, and war may have on a student's physical and emotional health and ability to function effectively in an educational setting.

Were the Definitions for Restraint and Seclusion Revised?

Yes. The definitions used in COMAR 13A.08.04 for restraint and seclusion were updated to be consistent with federal definitions. The federal definitions that were referenced for the COMAR can be found in the U.S. Department of Education's *Restraint and Seclusion: Resource Document* (2012) at the following link: <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.

What Role Do Positive Behavior Interventions, Strategies, and Supports Play with Restraint and Seclusion?

School personnel are encouraged to use an array of positive behavior interventions, strategies, and supports to increase or decrease targeted student behaviors. Exclusion, restraint, or seclusion shall only be used after less restrictive or alternative approaches have been considered and attempted or determined to be inappropriate. Exclusion, restraint, or seclusion shall be used in a humane, safe, and effective manner, without intent to harm or create undue discomfort, and consistent with known medical or psychological limitations and the student's behavior intervention plan (BIP).

What Actions are not Covered by COMAR 13A.08.04?

This chapter does not prohibit the following: (1) school personnel from initiating appropriate student disciplinary actions pursuant to Education Article §7-305, Annotated Code of Maryland, COMAR 13A.08.01.11, and COMAR 13A.08.03; or (2) law enforcement, judicial authorities, or school security personnel from exercising their responsibilities, including the physical detainment of a student or other person alleged to have committed a crime or posing a security risk in accordance with relevant law, regulation, policy, or procedures.

When can Physical Restraint or Seclusion be Used?

COMAR 13A.08.04.05(A)(1)(a) and COMAR 13A.08.04.05(B)(1) state that physical restraint or seclusion are prohibited in public agencies and nonpublic schools until there is an emergency situation and physical restraint or 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. While physical restraint or seclusion are allowed in limited circumstances, they are crisis-oriented responses that should not be used in lieu of less intrusive, nonphysical interventions. Under no circumstances should physical restraint or seclusion be used for discipline or staff convenience. Additionally, parental consent is required.

How is an Emergency Situation Defined?

According to COMAR 13A.08.04.05, physical restraint and seclusion can only be used in an emergency situation. An emergency situation arises when physical restraint or seclusion is necessary to protect a student or other person from imminent, serious, physical harm after less intrusive, nonphysical interventions have failed or been determined inappropriate.

Imminent, serious, physical harm has the same meaning as serious bodily injury as used in the Individuals with Disabilities Education Act (IDEA). It means bodily injury which involves:

- i) A substantial risk of death;
- ii) Extreme physical pain;
- iii) Protracted and obvious disfigurement; or
- iv) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

[34 C.F.R § 300.530(h)(i)(3); 18 U.S.C. § 1365(h)(3)]

Physical restraint or seclusion may not be used except to protect a student or other person from imminent, serious, physical harm, and should only be used by trained personnel. Regardless of whether it is included in a student's behavior intervention plan (BIP) and individualized education program (IEP), physical restraint or seclusion may not be used as a planned behavioral intervention in response to behavior that does not pose imminent danger of serious, physical harm to self or others. It would also be inappropriate to use physical restraint or seclusion as a form of punishment or discipline in response to disrespect, noncompliance, insubordination, or out-of-seat behavior.

What is the COMAR Guiding the Application of Restraint?

COMAR 13A.08.04.05(A)(d) indicates that in applying physical restraint, school personnel shall only use reasonable force as is necessary to protect a student or other person from imminent, serious, physical harm. In addition, physical restraint: (1) shall be removed as soon as the student is calm; (2) may not exceed 30 minutes; (3) may not place a student in a face down position; (4) may not place a student in any other position that will obstruct a student's airway or otherwise impair a student's ability to breathe, obstruct a staff member's view of the student's face, restrict a student's ability to communicate distress, or place pressure on a student's head, neck, or torso; or (5) straddle a student's torso. Staff implementing restraint shall provide a student who is restrained with an explanation of the behavior that resulted in the restraint. The explanation should be provided for each restraint incident. Each restraint incident should be debriefed and documented.

What is the COMAR Guiding the Application of Seclusion?

COMAR 13A.08.04.05(B) indicates that in applying seclusion, school personnel shall: (1) provide a student placed in seclusion with an explanation of the behavior that resulted in the removal and instructions on the behavior required to return to the learning environment; (2) allow students who use a communication device, access to the communication device while they are in seclusion; (3) remain in close proximity to the door of a seclusion room at all times; (4) actively observe a student placed in seclusion; and (5) debrief and document each seclusion incident. In addition, the seclusion event: (1) shall be appropriate to the student's developmental level and severity of the behavior; (2) may not restrict the student's ability to communicate distress; and (3) may not exceed 30 minutes.

What are Guidelines for Seclusion Rooms?

COMAR 13A.08.04(B) indicates that rooms used for seclusion must: (1) be free of objects and fixtures with which a student could self-inflict bodily harm; (2) provide school personnel with an adequate view of the student from all angles and at all times; (3) provide active observation of a student placed in seclusion; and (4) provide adequate lighting and ventilation. In addition, the door of a seclusion room should be fitted with a lock that releases automatically when not physically held in the locked position by a school staff member on the outside of the door. The school staff member applying the seclusion should be one of the individuals authorized to perform seclusion.

What are the Contraindications for Restraint and Seclusion?

Contraindications for the use of restraint and seclusion for students should be considered. Contraindications may include medical history and/or past trauma. Contraindications are determined by school administrators, in consultation with licensed medical and/or mental health professionals or certified mental health professionals (e.g., school psychologist, licensed clinical social worker, school counselor, etc.). The licensed or certified individual should have the background required to make the determination.

Who Authorizes Staff to Perform Restraint and/or Seclusion?

Annually, the school administrator for each local school, public agency, or nonpublic school shall authorize: (1) school personnel to serve as a school-wide resource to assist in ensuring the proper administration of exclusion, restraint, and seclusion; and (2) school personnel to use restraint and/or seclusion and to implement the policies and procedures for restraint and seclusion. Both of these sets of individuals must receive the required training if they are not the same individuals.

What is the Required Professional Development for Those Authorized to Perform Restraint and Seclusion?

School personnel who are authorized to perform restraint and/or seclusion are required to engage in the following annual professional development: trauma-informed interventions; functional behavior assessment and behavior intervention planning; seclusion; symptoms of physical distress and positional asphyxia; first aid and cardiopulmonary resuscitation (CPR); and individualized behavior interventions based on student characteristics, including disability, medical history, and past trauma. All training must be evidence-based and conducted by certified or licensed individuals. The training may be provided by multiple providers to meet the professional development requirements. Training can be conducted either face-to-face or online.

Are the Requirements for First Aid and CPR New Requirements for Restraint and Seclusion?

Yes. Requirements for first aid and CPR have been added to ensure the safety of students and staff. Training requirements have also been added. Many staff receive training in first aid and CPR on a regular basis from the American Red Cross or American Heart Association. That training is often renewed every two years. As long as the training has been performed within the last two years, and the staff member has documentation of that active certification, this documentation will meet the training requirement for first aid and CPR. COMAR 13A.05.05.09 requires that at least one adult in each school, other than the designated school health services professional and the school health services aide, be certified by the American Red Cross or its equivalent and be on site during the regular school day and at all school-sponsored events.

What Documentation is Required for Restraint Incidents?

Each time a student is in a restraint, school personnel shall document: (1) other less intrusive interventions that have failed or been determined inappropriate; (2) the precipitating event immediately preceding the behavior that prompted the use of restraint; (3) the behavior that prompted the use of a restraint; (4) the names of the school personnel who observed the behavior that prompted the use of restraint; and (5) the names and signatures of the staff members implementing and monitoring the use of restraint. In addition, the documentation shall include: (1) the type of restraint, (2) the length of time in restraint, (3) the student's behavior and reaction during the restraint, and (4) the name and signature of the administrator informed of the use of restraint.

What Documentation is Required for Seclusion Incidents?

Each time a student is in seclusion, school personnel shall document: (1) other less intrusive interventions that have failed or been determined inappropriate; (2) the precipitating event immediately preceding the behavior that prompted the use of seclusion; (3) the behavior that prompted the use of a seclusion; (4) the names of the school personnel who observed the behavior that prompted the use of seclusion; and (5) the names and signatures of the staff members implementing and monitoring the use of seclusion. In addition, the documentation shall include: (1) the length of time in seclusion, (2) the student's behavior and reaction during the seclusion, and (3) the name and signature of the administrator informed of the use of seclusion.

What are the Guidelines for Parent Notification?

Each time a restraint or seclusion is used for a student, parents shall be provided oral or written notification within 24 hours, unless otherwise provided for in the student's BIP or IEP.

What is the Role of the Student Support Team (SST) or IEP Team?

If a restraint or seclusion is used for a student who has not been identified as a student with a disability, the student shall immediately be referred to the school's SST or IEP Team. If a restraint or seclusion is used for a student who has been identified with a disability, and the BIP or IEP does not include the use of restraint or seclusion, the IEP Team should meet in 10 days to consider: (1) the need for a functional behavioral assessment; (2) developing appropriate behavioral interventions; and (3) implementing a BIP. If a restraint or seclusion is used for a student who has been identified as a student with a disability, and the BIP or IEP does include the use of restraint or seclusion, the IEP Team should meet to review or revise, as appropriate, the IEP or BIP. The following shall be considered: (1) existing health, physical, psychological, and psychosocial information, including any contraindications to the use of restraint or seclusion based on medical history or past trauma; (2) information provided by the parent; (3) observations by teachers and related service providers; (4) the student's current placement; and (5) the frequency and duration of restraints or seclusion events that occurred since the IEP team last met.

What is the Monitoring and Compliance for Restraint and Seclusion?

Each public agency and nonpublic school shall develop policies and procedures for monitoring the use of restraint and seclusion, and receiving and investigating complaints regarding restraint and seclusion. The MSDE collects annual data from local school systems, nonpublic schools, and public agencies on the use of restraint and seclusion incidents disaggregated by student data (i.e., gender, grade, disability, age, and type of placement). Annual data are also collected on professional development provided to staff (i.e., trauma-informed interventions; and positive behavioral interventions, strategies, and supports), observations of seclusion rooms, and training plans for the use of seclusion.

Contacts

Deborah Nelson, Ph.D., NCSP

Section Chief, School Safety and Climate and Specialist for Psychological Services

Division of Student Support, Academic Enrichment, and Educational Policy

Maryland State Department of Education

200 West Baltimore Street

Baltimore, MD 21201-2595

deborah.nelson@maryland.gov

410-767-0294

Resources

Federal Guidance

U.S. Department of Education—May 15, 2012—*Restraint and Seclusion: Resource Document*. This document describes 15 principles for state, district, and school staff; parents; and other stakeholders to consider when states, localities, and districts develop policies and procedures in writing on the use of restraint and seclusion. <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>

Code of Maryland Regulations

COMAR 13A.08.04 Student Behavior Interventions (search at http://www.dsd.state.md.us/COMAR/subtitle_chapters/Titles.aspx)

COMAR 13A.08.04.05 General Requirements for the Use of Restraint or Seclusion (search at http://www.dsd.state.md.us/COMAR/subtitle_chapters/Titles.aspx)

Student Services and Strategic Planning Branch

Resource Guide of Maryland School Discipline Practices—January 24, 2017.
<http://marylandpublicschools.org/about/Documents/DSFSS/SSSP/ResourceGuideMDSchDiscPactices011117.pdf>

HB 1166.restraint and seclusion requirements - SEN

Uploaded by: Woolums, John

Position: FAV

BILL: House Bill 1166
TITLE: Education – Physical Restraint and Seclusion – Requirements, Reporting, and Training
POSITION: SUPPORT
DATE: March 30, 2021
COMMITTEE: Education, Health, and Environmental Affairs
CONTACT: John R. Woolums, Esq.

The Maryland Association of Boards of Education (MABE) supports House Bill 1166 as amended in the House.

As amended, MABE believes that this legislation builds on the comprehensive reforms enacted in 2017 and the corresponding regulations governing the use of restraint and seclusion. These comprehensive regulations were the work product of a task force established by the General Assembly in 2017 which was charged with examining all practices and procedures related to behavioral interventions in schools, inclusion the use of restraint, seclusion, and trauma-informed interventions. House Bill 1166 enhances reporting and accountability measures relating to this framework.

Specifically, the task force fulfilled the legislative directive to consider and develop recommendations on the following: (1) the circumstances under which, and the types of schools in which, restraint and seclusion shall be prohibited; (2) contraindications for restraint and seclusion and who may authorize restraint and seclusion; (3) definitions of “positive behavior interventions, strategies, and supports” “behavior intervention plan”, and “trauma informed interventions”; (4) professional development requirements for school staff regarding behavioral interventions; (5) minimum requirements for policies and procedures to be developed by local school systems, public agencies, and nonpublic schools; and (6) standards for monitoring compliance by local school systems, public agencies, and nonpublic schools.

The comprehensive regulations arising from this task force were adopted in 2018. MABE endorses the thorough approach taken by the task force in crafting these regulations, including clearly defined terms, student-oriented safety measures, parental consent, and professional development. Attached is the departmental guidance issued in July of 2019 accompanying the regulations.

MABE recognizes and respects the work of advocates calling not only for strict limitations on the use of restraint and seclusion, but also for the absolute, or near absolute, prohibition on the use of seclusion. However, MABE believes that the approach taken under House Bill 1166 better represents the need to regulate, monitor, and hold school systems accountable for approving and administering the use of restraint and seclusion. This legislation strengthens accountability for the strict limitations that are now clearly set forth in regulations.

For these reasons, MABE requests a favorable report on House Bill 1166.

HB1166- MCPS UNFAV.pdf

Uploaded by: Suskind, Danielle

Position: UNF



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
CONTACT: Danielle M. Susskind, Coordinator, Legislative Affairs
[Danielle M. Susskind @mcpsmd.org](mailto:Danielle.M.Susskind@mcpsmd.org)

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.