

BILL: House Bill 331
TITLE: Education - Behavior Intervention Plans - Physical Restraint and Seclusion
POSITION: OPPOSE
DATE: February 14, 2017
COMMITTEE: Ways and Means Committee
CONTACT: John R. Woolums, Esq.

The Maryland Association of Boards of Education (MABE) opposes House Bill 331, which would prohibit the use of physical restraint or seclusion of a student except in very narrow circumstances. MABE recognizes that the statute may be in need of updating, but respectfully requests that any statutory changes more closely reflect the regulations that now govern these practices.

Under current law and regulation, "physical restraint" is defined as the use of physical force, without the use of any device or material, that restricts the free movement of all or a portion of a student's body. However, "physical restraint" does not include: (i) Briefly holding a student to calm or comfort the student; (ii) Holding a student's hand or arm to escort the student safely from one area to another; (iii) Moving a disruptive student who is unwilling to leave the area if other methods such as counseling have been unsuccessful; or (iv) Intervening in a fight in accordance with Education Article (Education Article, §7-307; COMAR 13A.08.04.02). Under House Bill 331, any other use of physical restraint would be limited to situations in which "other less intrusive interventions have been demonstrated by empirical evidence to be ineffective." This condition is too restrictive to be practically achievable on a case by case basis.

More reasonably, state regulations under COMAR 13A.08.04.05A(1)(a) prohibit the use of physical restraint as follows:

- (a) The use of physical restraint is prohibited in public agencies and nonpublic schools, unless:
 - (i) 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;
 - (ii) The student's behavioral intervention plan or IEP describes the specific behaviors and circumstances in which physical restraint may be used; or
 - (iii) 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.

MABE opposes House Bill 331 because it would eliminate the limited exception provided in regulations which allows for the use of physical restraint if there is "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."

Similarly, the definition of "seclusion" in statute has not been updated to reflect the major reforms adopted in regulations in 2002. State regulations more appropriately define "seclusion" as the confinement of a student alone in a room from which the student is physically prevented from leaving. Again, MABE agrees that this definition, and conditions relating to the use of seclusion, could be adopted in statute. However, the limitations proposed in House Bill 331 do not preserve some of the essential elements of the regulations. This bill would limit the use of seclusion to situations in which "other less intrusive interventions have been demonstrated by empirical evidence to be ineffective;" and the use of seclusion "has been authorized by a physician, clinical psychologist, or clinical social worker."

State regulations, developed collaboratively by education stakeholders and in place since 2002, prohibit the use of seclusion as follows:

- (1) The use of seclusion is prohibited in public agencies and nonpublic schools unless:
 - (a) There is an emergency situation and seclusion is necessary to protect a student or another person after other less intrusive interventions have failed or been determined to be inappropriate;
 - (b) The student's IEP or behavioral intervention plan describes the specific behaviors and circumstances in which seclusion may be used; or
 - (c) The parents of a nondisabled student have otherwise provided written consent for the use of seclusion while a behavior intervention plan is being developed.

MABE requests that any changes in statute regarding the use of seclusion preserve the exception described above in COMAR 13A.08.04.05B(1)(a). Again, local boards of education seek to preserve the essential role of the professional judgement of educators and administrators to determine when seclusion may be necessary in “an emergency situation ... to protect a student or another person after other less intrusive interventions have failed or been determined to be inappropriate.”

For these reasons, MABE requests an unfavorable report on House Bill 331.