

BILL: House Bill 1166
TITLE: Education – Physical Restraint and Seclusion – Requirements, Reporting, and Training
POSITION: OPPOSE
DATE: February 24, 2021
COMMITTEE: Ways & Means Committee
CONTACT: John R. Woolums, Esq.

The Maryland Association of Boards of Education (MABE) opposes House Bill 1166.

MABE opposes this legislation in favor of the comprehensive regulations governing the use of restraint and seclusion. These 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, including the use of restraint, seclusion, and trauma-informed interventions.

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. MABE believes this is the foreseeable outcome of the strict requirements if this legislation for medical licensure of school system staff responsible for approving and administering the use of seclusion. This approach was thoroughly vetted and rejected by the task force in 2018. Instead, strict limitations are now clearly set forth in regulations.

For these reasons, MABE requests an unfavorable report on House Bill 1166.



**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

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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>