

HOUSE BILL 331

F1

7lr1283
CF 7lr2175

By: **Delegates Luedtke and Ebersole**

Introduced and read first time: January 25, 2017

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Education – Behavior Intervention Plans – Physical Restraint and Seclusion**

3 FOR the purpose of prohibiting a public agency and a nonpublic school from using physical
4 restraint except under certain circumstances; prohibiting a public agency and a
5 nonpublic school from using seclusion except under certain circumstances; requiring
6 a public agency or a nonpublic school that uses seclusion to document the completion
7 of a certain assessment, observe the student at all times, limit the period of seclusion
8 to a certain amount of time, discontinue the seclusion after a certain time, and
9 consider alternative behavior interventions under certain circumstances; requiring
10 schools to report to the State Department of Education on or before a certain date
11 each year certain information relating to physical restraint and seclusion incidents;
12 requiring the Department to adopt certain regulations; requiring the State
13 Superintendent of Schools to consult with certain individuals relating to training
14 requirements for teachers and administrators regarding evidence-based positive
15 behavioral interventions, strategies, and supports, and trauma-informed
16 interventions; requiring the Department to coordinate with public agencies and
17 nonpublic schools to ensure that certain individuals who work directly with students
18 receive certain initial and periodic professional development; altering a certain
19 definition; defining certain terms; repealing certain obsolete provisions of law; and
20 generally relating to behavior intervention plans.

21 BY repealing and reenacting, with amendments,
22 Article – Education
23 Section 7–1101, 7–1103, and 7–1104
24 Annotated Code of Maryland
25 (2014 Replacement Volume and 2016 Supplement)

26 BY repealing
27 Article – Education
28 Section 7–1102
29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2014 Replacement Volume and 2016 Supplement)

BY adding to

Article – Education

Section 7–1102

Annotated Code of Maryland

(2014 Replacement Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Education

7–1101.

(a) In this subtitle the following terms have the meanings indicated.

(b) “Behavior intervention plan” means a proactive plan designed to address
[problem] **CHALLENGING** behavior exhibited by a student in the educational setting
through the use of [positive]:

(1) POSITIVE behavioral interventions, strategies, and supports; **AND**

(2) TRAUMA-INFORMED INTERVENTIONS.

(c) “Exclusionary time out” means the circumstance in which a student is
removed to a designated time-out room or other area for a fixed period not to exceed 30
minutes.

(d) “Functional behavior assessment” means the systematic process of:

(1) Describing problematic behavior exhibited in the educational setting,
including identification of environmental and other factors and settings that contribute to
or predict:

(i) The occurrence or nonoccurrence of the behavior; and

(ii) The maintenance of the behavior over time; and

(2) Using the information gathered to guide the development of an effective
and efficient behavior intervention plan.

(e) (1) “Mechanical restraint” means the use of any device or material attached
or adjacent to the student’s body that restricts freedom of movement or normal access to
any portion of the student’s body and that the student cannot easily remove.

(2) “Mechanical restraint” does not include a protective or stabilizing device ordered by a physician when it is used as prescribed.

(f) “Nonpublic school” means a school that receives funds from the Department for the purpose of providing special education and related services to students with disabilities.

(g) (1) “Physical restraint” means the use of physical force, without the use of any device or material, to restrict the free movement of all or a portion of a student’s body.

(2) “Physical restraint” does not include:

(i) Briefly holding a student in order 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 when other methods such as counseling have been unsuccessful; or

(iv) Breaking up a fight in the school building or on school grounds.

(H) “PUBLIC AGENCY” MEANS THE DEPARTMENT, A LOCAL SCHOOL SYSTEM, OR ANY STATE AGENCY RESPONSIBLE FOR PROVIDING EDUCATION TO STUDENTS.

[(h)] (I) “Seclusion” means the confinement of a student ALONE in a [locked] room, [closet, box] AN ENCLOSURE, or ANY other space from which the student is physically prevented from leaving.

(J) “TRAUMA-INFORMED INTERVENTIONS” MEANS AN APPROACH TO A BEHAVIOR INTERVENTION PLAN THAT IS INFORMED BY THE RECOGNITION OF THE IMPACT THAT TRAUMA, INCLUDING VIOLENCE, ABUSE, NEGLECT, DISASTER, TERRORISM, AND WAR MAY HAVE ON AN INDIVIDUAL’S PHYSICAL AND EMOTIONAL HEALTH AND ABILITY TO FUNCTION.

[7–1102.

(a) The State Superintendent shall appoint a task force to propose regulations to the State Board regarding student behavior intervention practices.

(b) The task force shall consist of:

(1) Representatives of the Department;

(2) Representatives of local school systems, including teachers, administrators, school psychologists, and social workers;

(3) Representatives of advocacy communities;

(4) Representatives from nonpublic special education facilities; and

(5) Individuals with knowledge of and expertise in positive behavioral interventions.

(c) The task force shall consider:

(1) The circumstances under which, and the schools or types of schools in which, physical restraint, mechanical restraint, and seclusion shall be prohibited;

(2) The definitions of involuntary and other types of time out;

(3) The use of physical restraint, mechanical restraint, voluntary time out, and involuntary time out, including:

(i) The types of permissible and prohibited physical holds and mechanical restraints;

(ii) The size and characteristics of a time out room or other area; and

(iii) The amount of time and examples of circumstances under which students may be placed in physical restraint, voluntary time out, and involuntary time out;

(4) The circumstances under which review of a student's individualized education program would occur if restraints or involuntary time out are used with the student as a behavior intervention;

(5) The circumstances under which the special education evaluation process shall be initiated for students not in special education who are restrained or placed in involuntary time out as a behavior intervention;

(6) The circumstances under which a functional assessment and a behavior intervention plan will be conducted for the students described in items (4) and (5) of this subsection;

(7) Appropriate behavioral interventions, including but not limited to crisis intervention and prevention techniques;

(8) Definitions of "positive behavioral supports" and "behavior interventions and strategies plan";

(9) How to document properly the need for and use of behavioral interventions with students, including notice requirements to parents;

(10) Training requirements for school staff regarding behavioral interventions, including the need to individualize behavioral interventions based on a student's behavioral, medical, and psychological history and disability characteristics;

(11) Minimum requirements for policies and procedures to be developed by local school systems, State operated programs, and nonpublic schools; and

(12) Standards for monitoring compliance by local school systems, State operated programs, and nonpublic schools with the requirements of this subtitle.

(d) The Department shall submit proposed regulations to the State Board of Education on or before December 31, 2002.]

7-1102.

(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PUBLIC AGENCY AND A NONPUBLIC SCHOOL MAY NOT USE PHYSICAL RESTRAINT.

(2) A PUBLIC AGENCY AND A NONPUBLIC SCHOOL MAY USE PHYSICAL RESTRAINT ONLY IF:

(I) PHYSICAL RESTRAINT IS NECESSARY TO PROTECT A STUDENT OR ANOTHER INDIVIDUAL FROM IMMINENT SERIOUS PHYSICAL HARM; AND

(II) OTHER LESS INTRUSIVE, NONPHYSICAL INTERVENTIONS HAVE BEEN DEMONSTRATED BY EMPIRICAL EVIDENCE TO BE INEFFECTIVE.

(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PUBLIC AGENCY AND A NONPUBLIC SCHOOL MAY NOT USE SECLUSION.

(2) A PUBLIC AGENCY AND A NONPUBLIC SCHOOL MAY USE SECLUSION ONLY IF:

(I) SECLUSION IS NECESSARY TO PROTECT THE STUDENT OR ANOTHER INDIVIDUAL FROM IMMINENT SERIOUS PHYSICAL HARM;

(II) OTHER LESS INTRUSIVE INTERVENTIONS HAVE BEEN DEMONSTRATED BY EMPIRICAL EVIDENCE TO BE INEFFECTIVE; AND

(III) ONE OF THE FOLLOWING INDIVIDUALS HAS AUTHORIZED THE USE OF SECLUSION:

1. A PHYSICIAN WHO IS LICENSED TO PRACTICE MEDICINE UNDER TITLE 14 OF THE HEALTH OCCUPATIONS ARTICLE;

2. A CLINICAL PSYCHOLOGIST WHO IS LICENSED TO PRACTICE PSYCHOLOGY UNDER TITLE 18 OF THE HEALTH OCCUPATIONS ARTICLE; OR

3. A CLINICAL SOCIAL WORKER WHO IS LICENSED TO PRACTICE CLINICAL SOCIAL WORK UNDER TITLE 19 OF THE HEALTH OCCUPATIONS ARTICLE.

(3) BEFORE AN INDIVIDUAL DESCRIBED IN PARAGRAPH (2)(III) OF THIS SUBSECTION MAY AUTHORIZE THE USE OF SECLUSION, THE INDIVIDUAL MUST:

(I) HAVE RECEIVED TRAINING IN EACH OF THE PRACTICES AND STANDARDS AREAS SPECIFIED IN COMAR 13A.08.04.06(C)(3);

(II) BE FAMILIAR WITH THE STUDENT; AND

(III) HAVE COMPLETED A RISK ASSESSMENT OF THE STUDENT TO DETERMINE WHETHER SECLUSION IS CONTRAINDICATED FOR MEDICAL, PHYSICAL, PSYCHOLOGICAL, PSYCHOSOCIAL, OR ANOTHER REASON AND HAVE CONCLUDED THAT SECLUSION IS NOT CONTRAINDICATED.

(4) IF THE DOOR TO A ROOM USED FOR SECLUSION HAS A LOCKING MECHANISM:

(I) THE LOCKING MECHANISM MAY BE ENGAGED ONLY WHEN IT IS HELD IN POSITION BY AN INDIVIDUAL; OR

(II) IF THE LOCKING MECHANISM IS ELECTRONICALLY ENGAGED, THE LOCKING MECHANISM MUST AUTOMATICALLY RELEASE IF A FIRE ALARM IS ACTIVATED.

(C) (1) IF A PUBLIC AGENCY OR NONPUBLIC SCHOOL USES SECLUSION IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION, THE SECLUSION SHALL BE CONDUCTED IN ACCORDANCE WITH THIS SUBSECTION.

1 **(2) THE PUBLIC AGENCY OR NONPUBLIC SCHOOL SHALL DOCUMENT**
2 **THE COMPLETION OF THE RISK ASSESSMENT REQUIRED UNDER SUBSECTION**
3 **(B)(3)(III) OF THIS SECTION:**

4 **(I) AT EACH ANNUAL INDIVIDUALIZED EDUCATION PROGRAM**
5 **MEETING FOR A STUDENT WHO IS RECEIVING SPECIAL EDUCATION SERVICES;**

6 **(II) WHENEVER A PLACEMENT CHANGE OF A STUDENT IS MADE;**
7 **AND**

8 **(III) AT OTHER TIMES AS WARRANTED, INCLUDING WHEN THERE**
9 **IS A CHANGE IN THE STUDENT'S HEALTH STATUS OR A TRAUMATIC EVENT OCCURS**
10 **IN THE STUDENT'S LIFE.**

11 **(3) THE STUDENT SHALL BE DIRECTLY OBSERVED AT ALL TIMES.**

12 **(4) THE PERIOD OF SECLUSION MAY NOT EXCEED 30 MINUTES.**

13 **(5) THE SECLUSION SHALL BE DISCONTINUED AS SOON AS IT IS NO**
14 **LONGER NECESSARY TO PROTECT THE STUDENT OR ANOTHER INDIVIDUAL FROM**
15 **IMMINENT SERIOUS PHYSICAL HARM.**

16 **(6) IF THE STUDENT'S BEHAVIOR ESCALATES WITH THE USE OF**
17 **SECLUSION OR THE STUDENT IS OTHERWISE ADVERSELY AFFECTED BY THE USE OF**
18 **SECLUSION, THE NEED FOR ALTERNATIVE BEHAVIOR INTERVENTIONS SHALL BE**
19 **CONSIDERED AS FOLLOWS:**

20 **(I) IF THE STUDENT IS RECEIVING SPECIAL EDUCATION**
21 **SERVICES, THE INDIVIDUALIZED EDUCATION PROGRAM TEAM SHALL CONVENE AN**
22 **EXPEDITED TEAM MEETING; OR**

23 **(II) IF THE STUDENT IS NOT RECEIVING SPECIAL EDUCATION**
24 **SERVICES, THE PUBLIC AGENCY OR NONPUBLIC SCHOOL SHALL CONVENE AN**
25 **EXPEDITED PUPIL PERSONNEL MEETING.**

26 **(D) BEGINNING WITH THE 2018–2019 SCHOOL YEAR, ON OR BEFORE**
27 **DECEMBER 1 EACH YEAR, EACH SCHOOL SHALL SUBMIT TO THE DEPARTMENT A**
28 **REPORT FOR THE PRIOR SCHOOL YEAR ON THE NUMBER OF PHYSICAL RESTRAINT**
29 **AND SECLUSION INCIDENTS, DISAGGREGATED BY THE STUDENT'S JURISDICTION,**
30 **DISABILITY, RACE, GENDER, AND TYPE OF PLACEMENT.**

31 **(E) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT THIS**
32 **SECTION.**

1 7-1103.

2 Each [local school system, State operated program,] **PUBLIC AGENCY** and nonpublic
3 school shall develop policies and procedures in compliance with this subtitle and the
4 regulations adopted by the Department.

5 7-1104.

6 **(A)** The State Superintendent shall consult with representatives of institutions of
7 higher education and the Professional Standards and Teacher Education Board under Title
8 6, Subtitle 7 of this article with respect to the training requirements for teachers **AND**
9 **ADMINISTRATORS** to ensure that sufficient training is available regarding
10 **EVIDENCE-BASED** positive behavioral interventions [and], strategies, **AND SUPPORTS**
11 **AND TRAUMA-INFORMED INTERVENTIONS** consistent with professionally accepted
12 practices and standards for persons entering the field of education.

13 **(B) THE DEPARTMENT SHALL COORDINATE WITH EACH PUBLIC AGENCY**
14 **AND NONPUBLIC SCHOOL TO ENSURE THAT ALL SCHOOL ADMINISTRATORS,**
15 **TEACHERS, BEHAVIORAL SUPPORT SPECIALISTS, PARAPROFESSIONALS, AIDES, AND**
16 **OTHER PERSONNEL WHO DIRECTLY WORK WITH STUDENTS ON A DAILY OR ROUTINE**
17 **BASIS RECEIVE INITIAL AND PERIODIC PROFESSIONAL DEVELOPMENT REGARDING**
18 **EVIDENCE-BASED POSITIVE BEHAVIORAL INTERVENTIONS, STRATEGIES, AND**
19 **SUPPORTS, AND TRAUMA-INFORMED INTERVENTIONS TO CHALLENGING BEHAVIOR.**

20 **SECTION 2. AND BE IT FURTHER ENACTED,** That this Act shall take effect July
21 1, 2017.