

RESTRAINT AND SECLUSION

Implementation Guide

Office of Teaching and Learning
Division of Early Intervention and Special Education Services

Office of Organizational Effectiveness
Division of Student Support, Academic Enrichment,
and Educational Policy

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MARYLAND STATE DEPARTMENT OF EDUCATION

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Section I: Introduction

BACKGROUND

As the Maryland State Department of Education (MSDE) works to create a world-class public education system, it recognizes that a key component of this work is safe and healthy learning environments. Schools and classrooms must be safe spaces that provide a foundation in which our children can thrive. Extended school closures and stressors from the global COVID-19 pandemic, including the return to in-person learning, laid bare the challenges our families, schools, and communities face in addressing the social-emotional and behavioral needs of our students. MSDE fully supports the use of positive behavioral interventions and strategies to address challenging student behavior, with a focus on keeping students in the classroom and available for learning.

Across the State, local education agencies, public agencies, and nonpublic special education schools have often relied on the use of physical restraint and seclusion to manage inappropriate and challenging student behaviors. In 2012, the U.S. Department of Education issued the “Restraint and Seclusion: Resource Document,” which stated, “[t]here 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.” In fact, psychological harm, physical injuries, and even death can result from the use of restraint and seclusion.¹

On December 30, 2021, Mohammed Choudhury, State Superintendent of Schools issued a press release in response to the illegal and discriminatory use of restraint and seclusion. The Superintendent made clear that the illegal and inappropriate use of restraint and seclusion in any school is unacceptable, and he immediately formed an intra-department workgroup to develop an action plan to tackle this important issue. Subsequently, during the 2022 legislative session, the Maryland General Assembly passed House Bill 1255 “Physical Restraint and Seclusion – Limitations, Reporting, and Training” which amended and expanded the law governing restraint and seclusion. This bill, which went into effect July 1, 2022, amends the Education Article in part by:

- Banning the use of seclusion in local education agencies (LEA) and public agencies (PAs);
Placing strict requirements around the use of seclusion in nonpublic special education schools (nonpublic schools);
- Requiring each school to notify the LEA and MSDE within four days when a student is restrained and/or secluded 10 or more times in a given school year (public agencies that are not public schools must report to MSDE);
- Requiring the LEA to assess and provide trauma-informed behavioral intervention recommendations to the public or nonpublic school upon notification of 10 restraint and/or

¹ (National Association of State Mental Health Program Directors (NASMHPD). (2009). National executive training institute curriculum for the creation of violence free, coercion-free treatment settings and the reduction of seclusion and restraint, 7th edition. Alexandria, VA: National Association of State Mental Health Program Directors, Office of Technical Assistance.

Sailas, E.E.S. & Fenton, M. (2000). Seclusion and restraint for people with serious mental illnesses. The Cochrane Database of Systematic Reviews, Issue 1. Art. No.: CD001163. DOI: 10.1002/14651858.CD001163. Retrieved February 9, 2009, from <http://www.mrw.interscience.wiley.com/cochrane/clsysrev/articles/CD001163/frame.html>.

Weiss, E.M., Altimari, D., Blint, D.F., & Megan, K. (1998, October 11–15). Deadly restraint: A nationwide pattern of death. *Hartford Courant*.

seclusion incidents (MSDE will provide recommendations for public agencies that are not public schools);

- Requiring the LEA/PA/nonpublic school to develop corrective action if a system reports 10 or more incidents for a student or if the LEA/PA/nonpublic school fails to comply with the requirements of the law; and
- Elevating the annual collection of restraint and seclusion data tracking and reporting by MSDE.

PURPOSE

The purpose of this document is to provide guidance and resources to the LEA, PA, and nonpublic school to implement current State law and regulations, including restricting the use of restraint and eliminating the use of seclusion in all but nonpublic schools. Effectively addressing challenging behaviors proactively allows students to learn, develop, and participate in instruction, promoting high levels of academic achievement. With this in mind, the intent of this document is to:

- Provide a summary of State law pertaining to the use of restraint and seclusion for all Maryland students;
- Share guidance specific to students with disabilities;
- Offer answers to common questions pertaining to the use of restraint and seclusion; and
- Provide resources for the utilization of restraint and seclusion.

MSDE developed this document in collaboration with stakeholders (see Appendices B and C) to provide direction regarding the new statute and to guide LEAs, public agencies, and nonpublic schools in the revision and implementation of local policies. MSDE strongly supports the need for evidence-based positive behavioral interventions as a means for reducing the inappropriate reliance on restraint and seclusion. The Code of Maryland Regulations (COMAR) will be amended to reflect the requirements of the new statute and provide additional direction.

For questions regarding students with disabilities refer to Section III: Restraint and Seclusion for Students with Disabilities.

Section II: Restraint and Seclusion For All Students

GUIDANCE FOR ALL STUDENTS

The following questions and answers are provided to help clarify the requirements of the law, Md. Code, Education § 7-1101 et seq.; however, they are not intended to be all-inclusive. As MSDE, LEAs, PAs, and nonpublic schools implement the new statutory changes, additional questions may arise, and MSDE will update this document with further answers and clarifications, as appropriate.

DEFINITIONS

1. **Behavior Intervention Plan (BIP)** – a proactive plan designed to address problem behavior exhibited by a student in the educational setting through the use of positive behavioral interventions, strategies, and supports.
2. **Exclusion** – 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.
3. **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:
 - A substantial risk of death;
 - Extreme physical pain;
 - Protracted and obvious disfigurement; or
 - Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

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

4. **Nonpublic Special Education School (nonpublic school)** – a school that receives funds from MSDE for the purpose of providing special education and related services to students with disabilities.
5. **Physical Restraint** – a personal restriction that immobilizes a student or reduces the ability of a student to move their torso, arms, legs, or head freely that occurs during school hours.
 - Physical restraint does not include:
 - Briefly holding a student in order to calm or comfort the student;
 - Holding a student’s hand or arm to escort the student safely from one area to another;
 - Moving a disruptive student who is unwilling to leave the area when other methods, such as counseling, have been unsuccessful; or
 - Breaking up a fight in the school building or on school grounds.

Additional clarification is available in Appendix A

6. **Positive Behavioral Interventions, Strategies, and Supports** – a 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.
7. **Public Agency** – MSDE, an LEA, the Maryland School for the Deaf, and the Maryland School for the Blind. Please note: the Juvenile Services Education Program is exempted from the restraint and seclusion requirements and from the notification and data collection requirements of this law.
8. **School Hours** – includes the designated time that a school opens and closes for students, school-provided transportation, and school-sponsored events.
9. **School Year** – the school year begins on July 1 of the current year and ends on June 30 of the following year.
10. **Seclusion** – the confinement of a student alone in a room, an enclosure, or any other space from which the student is physically prevented from leaving during school hours.
 - Seclusion does not include:
 - a behavior intervention plan of separating a student by placing the student into a nonlocked room from which the student is allowed to leave; or
 - within a separate location in a classroom from which the student is not physically prevented from leaving.

Additional clarification is available in Appendix A

11. **Trauma Informed Intervention** – an approach to behavior intervention that is informed by the recognition that the experience of trauma, including the experience of violence, abuse, neglect, disaster, terrorism, and war, may have a significant impact on an individual's physical and emotional health and ability to function.

FREQUENTLY ASKED QUESTIONS

Physical Restraint

1. When may a public agency or nonpublic school use physical restraint in response to a student's behavioral health crisis?

Neither a public agency nor a nonpublic school may use physical restraint on a student as a behavioral health intervention unless:

- Physical restraint is necessary to protect the student or other individual from imminent, serious physical harm; and
- Other, less intrusive, nonphysical interventions have failed or been demonstrated to be inappropriate for the student.

2. What is the difference between an escort, transport, and restraint?

In all instances, adults should be using nonphysical techniques to include clear, concise, verbal and paraverbal communication with students to elicit movement to an identified safe location. When these attempts have failed and the student and/or other individuals are facing imminent, serious physical harm, adults should utilize the least restrictive approach and refer to the physical intervention training methods utilized by their LEA.

A physical escort is the temporary touching or holding of the hand, wrist, arm, shoulder, or back for purposes of guiding a disruptive student to another location. A physical escort is not a prolonged action and does not restrict the student's ability to move freely. It is limited in duration and physical touch and most importantly allows the student to move in a natural manner from one place to another using their own physical ability. Additional clarification is available in Appendix A.

Transport techniques taught as part of crisis intervention training programs vary in the degree to which they restrict movement, under what circumstances they are recommended for use, and whether the technique as taught meets the State's definition of a restraint. Each LEA determines the physical intervention training program they will use and should remain consistent with the techniques and procedures taught within the selected program.

A physical restraint is a personal restriction that immobilizes or reduces the ability of a student to move their torso, arms, legs, or head freely. Thus, once a student is held for any period of time, with one or more parts of the body no longer able to move freely, the student's movement is being restricted rather than redirected and a physical restraint has begun.

[MD Code, Education, § 7-1101(d)]

3. What are the reporting requirements for moving a disruptive student who is unwilling to leave an area?

Reporting under the category of restraint and seclusion is not required unless it meets the definition of restraint. As defined in MD Code, Education §7-1101(d):

- Physical restraint does not include:
 - Briefly holding a student in order to calm or comfort the student;
 - Holding a student's hand or arm to escort the student safely from one area to another;
 - Moving a disruptive student who is unwilling to leave the area when other methods, such as counseling, have been unsuccessful; or
 - Breaking up a fight in the school building or on school grounds.

4. If staff are holding a child's arms behind the child's back and propelling the child down a hallway but say the child can move their limbs because they can kick their legs or get their arms out of the hold, would this be considered a restraint or a transport?

The conditions of each incident must be reviewed and compared to the definitions of what restraint is or is not (Additional clarification is available in Appendix A). Consider:

- Is the student being held to the point that the student is immobilized, unable to move their torso, arms, legs, or head freely? Restriction of any part of the body is a restraint.
- Is the touching temporary, such as holding the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location? If the student's movement is not restricted and the student can move all parts of their body freely, it is a transport.
- Is the student's motion occurring in a natural fashion? The student is independently moving to a new location in a manner that mirrors natural progression (i.e., upright, forward facing, feet on the ground)

Seclusion

1. What constitutes seclusion?

Seclusion is defined as the confinement of a student alone in a room, an enclosure, or any other space from which the student is physically prevented from leaving during school hours.

Seclusion is composed of two important factors: a student is alone in a space and is physically prevented from leaving.

The designation of "alone in a room" is not limited to four walls. When school staff implement methods to isolate a student alone in an area and prevent the student from leaving the space, it is seclusion. The ability of a staff member to interact with and monitor the safety of a student as required by COMAR 13a.08.04.05(3) should not be prohibited by the space used during these emergency situations. Additional clarification is available in Appendix A.

If staff are in a space with the student and attempting supportive interactions to assist the student in regaining control, this is exclusion and not seclusion.

2. When can a public agency use seclusion in response to a student's behavioral health crisis?

A public agency may not use seclusion as a behavioral health intervention on a student at any time.

3. Does there still need to be training on seclusion in public schools and agencies now that it is prohibited?

Seclusion needs to be clearly defined in all school settings to ensure that educators are aware of what seclusion is and to prevent its use in a public agency. A nonpublic school that utilizes seclusion must still complete all required training.

4. Since seclusion is prohibited in public schools across the state of Maryland, what alternative approaches can school staff use in crisis situations?

MSDE will be sharing behavioral intervention guidance and working with LEAs across the state to identify alternative approaches. In addition, every LEA identifies strategies and provides training to staff.

Imminent, Serious Physical Harm

1. What is the meaning of “imminent, serious physical harm”?

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:

- A substantial risk of death;
- Extreme physical pain;
- Protracted and obvious disfigurement; or
- 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)]

Documentation, Notification, and Reporting

1. What is considered an incident of physical restraint?

A personal restriction that immobilizes a student or reduces the ability of a student to move their torso, arms, legs, or head freely that occurs during school hours.

Each incident of restraint shall be documented on the MSDE, Restraint or Seclusion* Single Incident form and maintained in the student’s record.

2. What is considered an incident of seclusion?

Each time a student is enclosed in a room, enclosure, or other space and prevented from leaving, shall be counted as a separate incident of seclusion regardless of the duration of the incident.

Each incident of restraint shall be documented on the MSDE, Restraint or Seclusion* Single Incident form and maintained in the student’s record.

3. When must a public school provide notice to MSDE and the LEA regarding incidents of physical restraint?

If a student enrolled in a public school is physically restrained 10 times or more in a school year, and every 10th incident following (e.g., 10th, 20th, etc.), the public school will provide notice to MSDE and the LEA at the earliest opportunity, but not longer than four business days after the student’s 10th incident of physical restraint.

4. When must a public agency that is not a public school (i.e., Maryland School for the Deaf, Maryland School for the Blind, and The SEED School) provide notice to MSDE regarding incidents of physical restraint?

If a student in a public agency that is not a public school (i.e., Maryland School for the Deaf, Maryland School for the Blind, and The SEED School) is physically restrained 10 times or more in a school year, and every following 10th incident (e.g. 10th, 20th, 30th, etc.), the public agency shall

provide notice to MSDE at the earliest opportunity, but not longer than four business days after the student's 10th incident of physical restraint.

5. When must a nonpublic school provide notice to MSDE and the LEA regarding incidents of physical restraint and/or seclusion?

If a student placed in a nonpublic school by the LEA is physically restrained and/or placed in seclusion 10 times or more in a school year, and every following 10th incident (e.g. 10th, 20th, etc.), the nonpublic school shall provide notice to the Department and the LEA at the earliest opportunity, but not longer than four business days after the student's 10th incident of physical restraint and/or seclusion.

6. Is there a standard notification form to be used by all LEAs, PAs, and nonpublic schools?

Yes, all required universal templates are included in the Restraint and Seclusion: Process Guide. The Excessive (10 Incidents) Use of Restraint and/or Seclusion Report contains two parts. Part One is the Notification of 10 Incidents of Restraint and/or Seclusion.

7. For reporting purposes in nonpublic schools, must the school report to MSDE and LEA when a student is physically restrained 10 times and again when/if a student is placed in seclusion 10 times?

A nonpublic school must report to the Department and the LEA when the combined number of incidents (physical restraint AND/OR seclusion) reaches 10. At that time, the nonpublic school shall provide notice to the Department and the LEA at the earliest opportunity, but not longer than four business days after the student's 10th incident, and every following 10th incident (e.g., 10th, 20th, 30th, etc.), of combined physical restraint and seclusion incidents.

Responsibilities Upon Notification of the 10th Incident of Physical Restraint and/or Seclusion

1. What is the LEA's responsibility upon receipt of notice from a public school or nonpublic school of the 10th incident?

The LEA shall:

- Review the student's case, including the circumstances of each incident of physical restraint or seclusion; and
- Assess the public school or nonpublic school's pattern of behavioral health interventions to evaluate whether the public school or nonpublic school could use less restrictive behavioral health interventions; and
- Share the LEA's recommendations with MSDE and the public school or nonpublic school.

The review and recommendations are to be documented using the required MSDE, Excessive Use (10 Incidents) of Restraint and/or Seclusion form available in the Restraint and Seclusion: Process Guide. This Excessive (10 Incidents) Use of Restraint and/or Seclusion Report contains two Parts. Part Two is the Student and School Level Review with Recommendations.

If a student enrolled in a public agency that is not a public school is physically restrained 10 times or more in the school year, the public agency shall provide notice to MSDE at the earliest opportunity, but not longer than four business days after the student's 10th incident of physical restraint.

Upon receipt of notice from a public agency that is not a public school that a student is restrained 10 times or more, in a school year, MSDE shall:

- Review the student's case, including the circumstances of each incident of physical restraint or seclusion; and
- Assess the public agency's pattern of behavioral health interventions to evaluate whether the public school or nonpublic school could use less restrictive behavioral health interventions; and share MSDE's recommendations with the public agency.

2. Can the LEA/nonpublic school set up a system wherein the LEA/nonpublic is responsible for notifying the MSDE within four business days when a student is restrained and/or secluded 10 times? Or does it have to be the individual school?

Yes, the LEA/nonpublic school may set up a centralized notification protocol to report on behalf of the individual LEA/nonpublic school as long as the notification to MSDE occurs within four business days as required. The LEA is responsible for reporting on students attending a public school. The statute requires that the nonpublic school, "shall provide notice to MSDE and the local education agency at the earliest opportunity, not no longer four business days after the students' 10th incident of physical restraint and/or seclusion.

3. For reporting purposes, how will the 10 incidents be tracked and reported between public schools, nonpublic schools, and LEAs?

The public school, nonpublic school, or LEA where the student is currently enrolled must notify the MSDE upon the 10th incident, and every following 10th incident (e.g., 10th, 20th, etc.), of restraint and/or seclusion of the school year regardless of whether the incidents occurred in different schools or LEAs. This child-centered approach ensures that that student is not repeatedly subjected to restraint and/or seclusion without review of more appropriate interventions. Therefore, the number of incidents follow the student during the course of the school year and must include a continuous count of all incidents for the student in all schools that the student attended within the school year. Please refer to the Maryland Student Records Manual 2020 for guidance on procedures when a student transfers.

4. What happens if a public agency, the LEA in which the public agency is located, or a nonpublic school fails to comply with the provisions of this law or reports to the MSDE that a student has been physically restrained or placed in seclusion 10 times or more in a school year?

The public agency, the LEA in which the public agency is located, or a nonpublic school that fails to meet the provisions above shall submit to the Department a systemic, evidence-based, corrective action plan.

General Education and Section 504 Student Incidents

1. What happens if restraint or seclusion is used but the student does not have an IEP and/or Section 504 Plan?

If 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 pupil services team or an IEP team.

[COMAR 13A.08.04.05C(1)]

2. What happens if restraint or seclusion is used and the student has a Section 504 Plan?

While COMAR does not currently specify when the pupil services team must hold a meeting after restraining a student with a Section 504 Plan, the pupil services team must ensure that the student's behavioral needs are met through their Section 504 plan and a behavior intervention plan as appropriate. If the team has not considered the need to conduct a Functional Behavior Assessment (FBA) for the student, then in order to appropriately meet the student's needs, it should do so in an expeditious manner.²

Annual Reporting Required by Public Agencies and Nonpublic schools

1. What are the annual reporting requirements for each public agency and nonpublic school?

On or before December 1 each year, each public agency and nonpublic school shall submit to MSDE a report for the prior school year on:

- The number of physical restraint incidents, disaggregated by the student's jurisdiction, disability, race, gender, age, and type of placement;
- The number of physical restraint incidents for each student who had at least one physical restraint or seclusion incident, disaggregated by the student's jurisdiction, disability, race, gender, age, and type of placement;
- *For nonpublic schools*, the number of seclusion incidents, disaggregated by the student's jurisdiction, disability, race, gender, and age; and
- *For nonpublic schools*, the number of seclusion incidents for each student who had at least one physical restraint or seclusion incident, disaggregated by jurisdiction, disability, race, gender, and age.

In addition, on or before December 1 each year, each public agency and nonpublic school shall submit to the Department a report on steps taken to encourage positive behavioral interventions, including:

² Under Section 504 of the Rehabilitation Act (Section 504), 29 U.S.C. § 794, students have protection against discrimination based on their disability. If a student is denied the opportunity to participate in or benefit from aids, benefits, and services by inappropriately restraining and/or secluding them, the school violates its obligations under Section 504. Therefore, it is critical that teams appropriately evaluated and/or re-evaluated students with disabilities with regard to behavior, and that Section 504 teams and IEP teams develop appropriate behavior intervention plans to address the student's behavioral needs.

- The professional development provided to designated school personnel related to positive behavioral interventions, strategies, and supports and trauma-informed interventions for the prior school year;
- For nonpublic schools, the policy changes made to further reduce the use of seclusion incidents during the prior school year; and
- The policy changes or new professional development opportunities designed to further increase positive behavioral interventions and reduce physical restraint or seclusion incidents in the upcoming school year.

Additionally, each nonpublic school shall personally observe and review seclusion rooms, review training plans for the use of seclusion, and report to the Department regarding findings.

MSDE Responsibilities

1. What is the Department's responsibility regarding data submitted by nonpublic agencies and nonpublic schools?

MSDE is responsible for verifying the accuracy of a report from any public agency or nonpublic school that reports no physical restraint or seclusion incidents. If the MSDE is unable to verify the accuracy of a report submitted by a public agency or nonpublic school, MSDE shall make recommendations for improvements in data collection and positive behavioral interventions at the public agency or nonpublic school.

2. How will the Department hold public agencies and nonpublic schools accountable?

The MSDE will develop an accountability system to measure compliance by public agencies and nonpublic with COMAR 13A.08.04 – *Student Behavior Interventions* and any other regulations adopted to implement this law and analyzing data and information collected and submitted reports to determine trends and patterns in behavioral interventions. The MSDE is required to report to the General Assembly findings and recommendations reported by public agencies and nonpublic schools.

The report submitted by MSDE to the General Assembly will contain data for public agencies and nonpublic schools by school, subject to State and federal privacy laws. The data provided in the report will be presented in a manner that accounts for variations in enrollment between schools.

3. Is MSDE required to adopt regulations to implement the new law?

Yes. MSDE is required to develop regulations which must be approved and adopted by the State Board of Education.

4. How will the Department assist public agencies and nonpublic schools with professional development on positive behavioral interventions?

The MSDE will identify any gaps in behavioral interventions, strategies and supports. Following the identification of gaps, the MSDE, in consultation with representatives of institutions of higher education and the Professional Standards and Teacher Education Board, will adopt positive

behavioral intervention training requirements for teachers, administrators, behavioral health specialists, paraprofessionals, aides, and any other employees who interact routinely with students.

The adopted training requirements will include positive behavioral interventions, strategies, and supports that are evidence-based, include trauma-informed interventions and strategies for de-escalation, remedy any identified gaps, and are consistent with professionally accepted practices and standards for persons entering the field of education.

Additionally, the training requirements adopted will be the basis of a program of professional development that the MSDE will share with local school employees from public agencies and nonpublic schools. The MSDE will also issue guidance on best practices in implementing positive behavior intervention plans that are the basis for the professional development program.

COMAR 13A.08.04 – Student Behavior Interventions

The MSDE recognizes that COMAR 13A.08.04 – *Student Behavior Interventions* regulations will need to be amended in light of the new restraint and seclusion requirements under House Bill 1255 *Physical Restraint and Seclusion – Limitations, Reporting, and Training* (2022 Md. Laws, Chap. 31). However, it is important to note that COMAR 13A.08.04 remains valid where there is no conflict with the amended statute. This means that the new definitions adopted by the bill in Educ. Art. § 7-1101 override the existing definitions in COMAR. However, all other requirements of COMAR, such as restrictions on placing a student in a face down position during restraint (COMAR 13A.08.04.05A(1)(f)) and requirements for seclusion rooms (COMAR 13A.08.04.05B(3)), remain in effect. For more information on the existing Student Behavior Interventions regulations, please see [Guidance for Student Behavior Interventions: Restraint and Seclusion](#) (August 2019).

Section III: Restraint And Seclusion For Students With Disabilities

GUIDANCE FOR STUDENTS WITH DISABILITIES

MSDE’s Division of Early Intervention and Special Education Services (DEI/SES) is committed to ensuring that every Maryland student has access to a safe and supportive learning environment with healthy and trusting relationships with school staff. This starts with LEAs, PAs, and nonpublic schools creating a positive culture and instituting a tiered system of supports. In addition, LEAs/PAs, and nonpublic schools must proactively consider the social, emotional, academic, and behavioral needs of their individual students. When students engage in inappropriate or challenging behavior, LEAs/PAs, and nonpublic schools must determine the underlying cause of the behavior and employ trauma-informed positive behavioral interventions, as appropriate, to respond to, and to reduce, and/or eliminate these behaviors.

Restraint and seclusion are crisis interventions (Additional clarification is available in Appendix A) that may be implemented as part of an emergency response. *Restraint and Seclusion are only used in very limited and exceptional circumstances.* The purpose of this section is to aid IEP teams in implementing the new and amended statute governing Student Behavior Interventions (Md. Code, Education § 7-1101 *et seq.*) and current regulations (COMAR 13a.08.04 *et seq.*) as they relate to students with disabilities. One of the important changes to the statute is the adoption of amended and expanded definitions of restraint and seclusion. The below charts reflect the definitions in the statute. (MD Code, Education, § 7-1101).

Restraint IS...	Restraint IS NOT...
<p>A personal restriction that immobilizes a student or reduces the ability of a student to move their torso, arms, legs, or head freely that occurs during school hours.</p>	<p>Briefly holding a student to calm or comfort the student;</p> <p>Holding a student’s hand or arm to escort the student safely from one area to another;</p> <p>Moving a disruptive student who is unwilling to leave the area if other methods such as counseling have been unsuccessful;³ or</p> <p>Breaking up a fight in the school building or on school grounds.</p>

³ “Transport” is a term used in specific behavior intervention training programs (e.g., *Crisis Prevention Intervention*). The term is not defined in the statute or regulations. A transport is NOT a physical restraint, as long as its use is not consistent with the definition of physical restraint in MD Code, Education, § 7-1101(d). See Question #12 for more information on physical escorts.

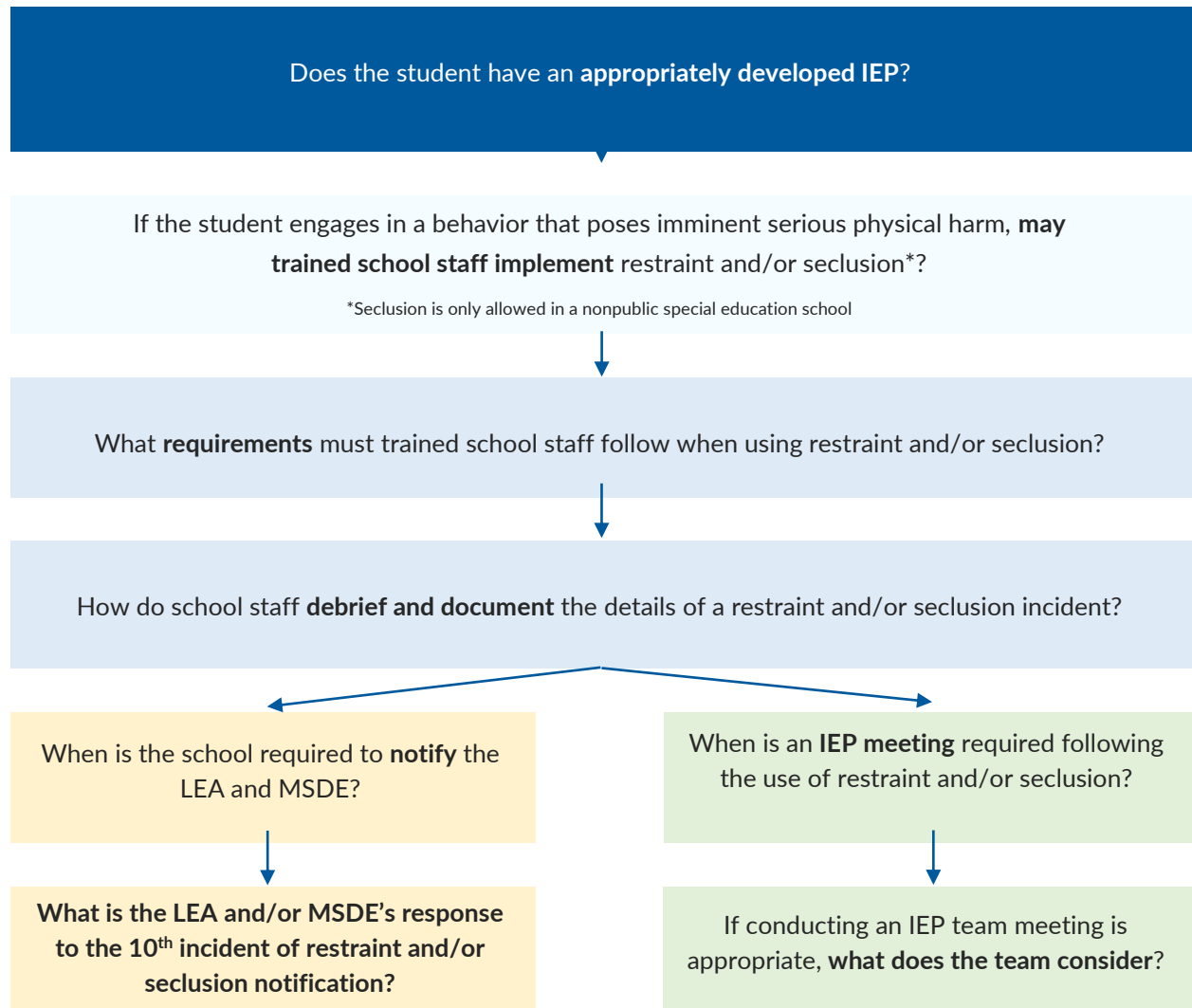
Seclusion* IS...	Seclusion* IS NOT...
<p>The confinement of a student alone in a room, an enclosure, or any other space from which the student is physically prevented from leaving during school hours.</p>	<p>A behavior intervention plan of separating a student by placing the student:</p> <ul style="list-style-type: none"> into a nonlocked room from which the student is allowed to leave; or within a separate location in a classroom from which the student is not physically prevented from leaving.
Exclusion IS...	
<p>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.</p>	

The new statutory changes went into effect on July 1, 2022. Until the State Board of Education adopts revised restraint and seclusion regulations, the current regulations remain in full effect where there is no conflict with the statute. *See* COMAR 13A.08.04 *et seq.* This includes the specific requirements regarding debrief and documentation of incidents of restraint and seclusion, the requirements for seclusion rooms in nonpublic schools, as well as the requirements directing the use of exclusion. (Exclusion 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. Use of exclusion is subject to the requirements of [COMAR 13A.08.04.04.](#))

To assist LEAs/PAs, and nonpublic schools in understanding the new and existing statutory and regulatory requirements for the use of restraint and seclusion, the DEI/SES developed the *Restraint and Seclusion: Process for Students with Disabilities*. This process focuses on a proactive approach, where restraint and seclusion are absolute last alternatives used only in emergency circumstances which pose imminent, serious physical harm to the child or others. Imminent, serious, physical harm has the same meaning as serious bodily injury as used in the Individuals with Disabilities Education Act (IDEA). (See Question #3 below.) A proactive approach begins with the early identification and evaluation of students with disabilities, including full assessment of their academic, social, emotional, and behavioral needs. This information is essential to developing an appropriate Individualized Education Program (IEP) and Behavior Intervention Plan (BIP), including positive behavioral interventions, strategies, and supports to address behavior that impedes learning.

A well-developed IEP and BIP will reduce the occurrence of crises, mitigating the need to use restraint and/or seclusion. However, if a situation arises where staff must protect the student or another individual from imminent, serious physical harm when other, less intrusive, nonphysical interventions have failed or been demonstrated to be inappropriate for the student, then trained staff may use restraint and/or seclusion; however, use must be consistent with the law and best practices. This is followed by appropriate documentation and a comprehensive debrief of the incident to determine how to prevent and/or respond to the student’s behavior moving forward. An IEP meeting may be required. The following graphic outlines the IEP team process that LEAs, PAs, and nonpublic schools must follow and provides guidance to "operationalize the law."

Restraint and Seclusion: Process for Students with Disabilities



Caution

It is important to note that the intent of the new statutory changes is to reduce the use of restraint and seclusion, both through limitations on how and when these interventions may be used, but also through a focus on trauma-informed positive behavior interventions and supports. As LEAs/PAs, and nonpublic schools remove and/or limit the use of these aversive interventions from their practices, they must ensure that students are not subject to other inappropriate or potentially harmful practices that remove the student from the classroom due to a lack of positive behavior supports and strategies. The use of exclusionary school discipline, such as suspension and expulsion, and emergency petitions are not an acceptable replacement for restraint and seclusion.

Does the student have an appropriately developed IEP?

If a student’s behavior impedes the student’s learning or the learning of others, the IEP team shall consider strategies, including positive behavioral interventions, strategies, and supports, to address that behavior, as appropriate. (COMAR 13A.05.01.08A(4)).

OPERATIONALIZING THE LAW

Develop as a component of local existing internal monitoring practices and protocols a system to ensure:

- PLAAFP addresses challenging behavior, utilizing:
 - Assessment information (formal and informal)
 - Behavioral performance trends over time
 - Focused observations
 - Input from staff and families
- Behavioral Intervention section of the IEP is completed
 - IEP teams do not proactively obtain signed parent consent for the use of restraint/seclusion
 - At a minimum, BIPs are annually reviewed and revised, as appropriate
- Supplementary aids/services and/or goals and objectives are included as appropriate; and
- Progress monitoring of behavioral needs



If the student engages in a behavior that poses imminent serious physical harm, may trained school staff implement restraint and/or seclusion*?

*Seclusion is only allowed in a nonpublic special education school

MD Code, Education, § 7-1102; COMAR 13A.08.04.05

Restraint:

Neither a public agency nor a nonpublic school may use restraint on a student as a behavioral health intervention unless:

- Restraint is necessary to protect the student or another individual from imminent serious physical harm; and
- Other, less intrusive, nonphysical interventions have failed or been demonstrated to be inappropriate for the student.

Seclusion:

A nonpublic school may not use seclusion as a behavioral health intervention for a student unless:

- Seclusion is necessary to protect the student or another individual from imminent serious physical harm;
- Other, less intrusive interventions have failed or been demonstrated to be inappropriate for the student;

- A qualified health care practitioner is on site and is directly observing the student during the seclusion; and
- The health care practitioner determines that seclusion is not contraindicated for the physical, psychological, or psychosocial health of the student.

OPERATIONALIZING THE LAW

Develop as a component of local existing internal monitoring practices and protocols a system to ensure:

- Establish a training plan to provide high-quality, ongoing, professional development to all current and incoming staff and nonpublic special education school partners (Gen. Ed, Spec. Ed, Support Staff)
- Consider training families in positive, proactive behavior strategies. Include family training, as necessary, in the IEP
- Proactive, less intrusive strategies are implemented with consistency and fidelity system wide
- Restraint and seclusion are only utilized in situations as a safety measure to address a clear and imminent danger that may result in serious, physical harm to the student or other individual.



What **requirements** must trained school staff follow when using restraint and/or seclusion?

MD Code, Education, § 7-1102; COMAR 13A.08.04.05

Restraint:

- Only applied by school personnel who are trained in the appropriate use of restraint consistent with COMAR.
- Shall only use reasonable force as is necessary to protect a student or other person from imminent, serious, physical harm.
- Shall be removed as soon as the student is calm.
- May not:
 - Exceed 30 minutes;
 - Place a student in a face down position;
 - 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 a student's face, restrict a student's ability to communicate distress, or place pressure on a student's head, neck, or torso; or
 - Straddle a student's torso.

Seclusion:

Education § 7-1102

- A qualified health care practitioner is on site and is directly observing the student during the seclusion.
- The health care practitioner determines that seclusion is not contraindicated for the physical, psychological, or psychosocial health of the student.
- If the door to the room in which the student is being secluded has a locking mechanism, the locking mechanism is engaged only if held in place by an individual or, if operated electronically, automatically releases in the case of an active fire alarm.
- The period of seclusion lasts the lesser of:
 - 30 minutes; or
 - A point in time during which the student no longer poses a threat of imminent, serious physical harm.

COMAR 13A.08.04.05

- A room used for seclusion shall:
 - Be free of objects and fixtures with which a student could self-inflict bodily harm;
 - Provide school personnel an adequate view of the student from all angles; and
 - Provide adequate lighting and ventilation.
- School personnel shall:
 - Remain in close proximity to the door of a seclusion room at all times;
 - Actively observe a student placed in seclusion at all times; and
 - 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.
 - Seclusion shall only be applied by school personnel trained in the appropriate use of seclusion consistent with COMAR

Each LEA/PA/and nonpublic special education school is required to identify an evidence-based crisis intervention program with a focus on proactive positive behavior intervention that reinforces the use of restraint and seclusion as a last resort to maintain the safety of the student and others.

Develop as a component of local existing internal monitoring practices and protocols a system to ensure all staff implementing restraint and/or seclusion maintain current training/certification in the locally approved crisis intervention program and implement all strategies with fidelity.



How do school staff debrief and document the details of a restraint and/or seclusion incident?

COMAR 13A.08.04.05

Debrief and Document:

- Other less intrusive interventions that have failed or been determined inappropriate;
- The precipitating event immediately preceding the behavior that prompted the use of restraint/seclusion;
- he behavior that prompted the use of a physical restraint/seclusion;
- The names of the school personnel who observed the behavior that prompted the use of restraint;
- The names and signatures of the staff members implementing and monitoring the use of restraint/seclusion;
- Justification for initiating the use of restraint/seclusion;
- The type of restraint;
- The length of time in restraint/seclusion;
- The student's behavior and reaction during the restraint/seclusion; and
- The name and signature of the administrator informed of the use of restraint/seclusion.

Documentation must be maintained in the student's educational record and available for inspection by the student's parent or legal guardian.

Parents shall be provided oral or written notification within 24 hours, unless otherwise provided for in a student's IEP or BIP.

Develop as a component of local existing internal monitoring practices and protocols a system to ensure:

- Debriefing and documentation occur as soon as possible following the incident to ensure accurate recollection of events and circumstances and include staff involved in the behavioral incident
 - Clear documentation of debrief discussions and decisions
 - Accurate and complete documentation of required components of an incident report
 - Consider training and implementation of the MSDE model individual Restraint and Seclusion Documentation Form;
 - Documentation of one restraint or seclusion incident per form
 - Clear descriptions of the;
 - Incident including details of adult response to each student behavior/action
 - Precipitating events prior to the restraint should include information regarding what occurred before the student's behavior began to escalate
 - Reflection on and consideration of whether the incident could have been handled differently
 - Signatures for those implementing and monitoring the restraint and the administrator informed of the incident
- Consideration of the restraint and seclusion incident documentation and debriefing behavior data to determine less intrusive interventions to de-escalate and handle future behavior events



When is an **IEP meeting** required following the use of restraint and/or seclusion?

MD Code, Education, § 7-1102; COMAR 13A.08.04.05

Education § 7-1102

- If the behavior of a student with an IEP is adversely affected after being placed in seclusion, the student's individualized education program team shall convene a meeting on an expedited basis or at the earliest opportunity to discuss alternative behavioral health treatments.

COMAR 13A.08.04.05

- If 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 pupil services team or an IEP team.
- 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 within 10 business days of the incident to consider:
 - The need for a functional behavioral assessment;
 - Developing appropriate behavioral interventions; and
 - Implementing a behavioral intervention plan.
- If restraint or seclusion is used for a student with a disability, and the IEP or BIP includes the use of restraint or seclusion, the student's IEP or BIP shall specify how often the IEP team shall meet to review or revise, as appropriate, the student's IEP or BIP.

OPERATIONALIZING THE LAW

Develop as a component of local existing internal monitoring practices and protocols a system to ensure:

- IEP Meeting notifications specify discussion of the restraint or seclusion incident as a purpose of the meeting
- IEP teams consider all available data, including restraint and seclusion debrief and documentation data to determine the need for;
 - Additional assessment/ data collection
 - Revisions to the IEP or BIP
- Prior Written Notice accurately document all considerations and decisions
- IEP teams meet to discuss and respond to the lack of behavioral progress



If conducting an IEP team meeting is appropriate, what does the team consider?

COMAR 13A.08.04.05

When an IEP team meets, the IEP team shall consider:

- Existing health, physical, psychological, and psychosocial information, including any contraindications to the use of restraint or seclusion based on medical history or past trauma;
- Information provided by the parent;

- Observations by teachers and related service providers;
- The student's current placement; and
- The frequency and duration of restraints or seclusion events that occurred since the IEP team last met

Parental Consent (MD Code, Education, § 8-405; COMAR 13A.08.04.05)

- The IEP team shall obtain the written consent of the parent if the team proposes to include restraint or seclusion in the behavior intervention plan or IEP to address the student's behavior.
- If the parent does not provide written consent or refusal, the IEP team shall send the parent written notice within 5 business days of the IEP team meeting that states:
 - The parent has the right to either consent or refuse to consent to the use of restraint or seclusion; and
 - If the parent does not provide written consent or a written refusal within 15 business days of the IEP team meeting, the IEP team may implement the proposed use of restraint or seclusion.
- If the parent provides written refusal, the IEP team may use the dispute resolution options listed in Education Article, § 8-413, Annotated Code of Maryland, to resolve the matter.

OPERATIONALIZING THE LAW

IEP teams should not proactively obtain consent for restraint and/or seclusion if the student has never been restrained or secluded.

Even if the IEP or BIP includes restraint or seclusion with parent consent, the IEP team must meet regularly to consider the need for new/additional/different strategies and accommodations for students (i.e., progress monitoring). This should occur before the 10th incident of restraint and/or seclusion.



When is the school required to **notify** the LEA and MSDE? What is the LEA and/or MSDE's response to **the 10th incident** of restraint and/or seclusion notification?

MD Code, Education, § 7-1103 and 7-1106

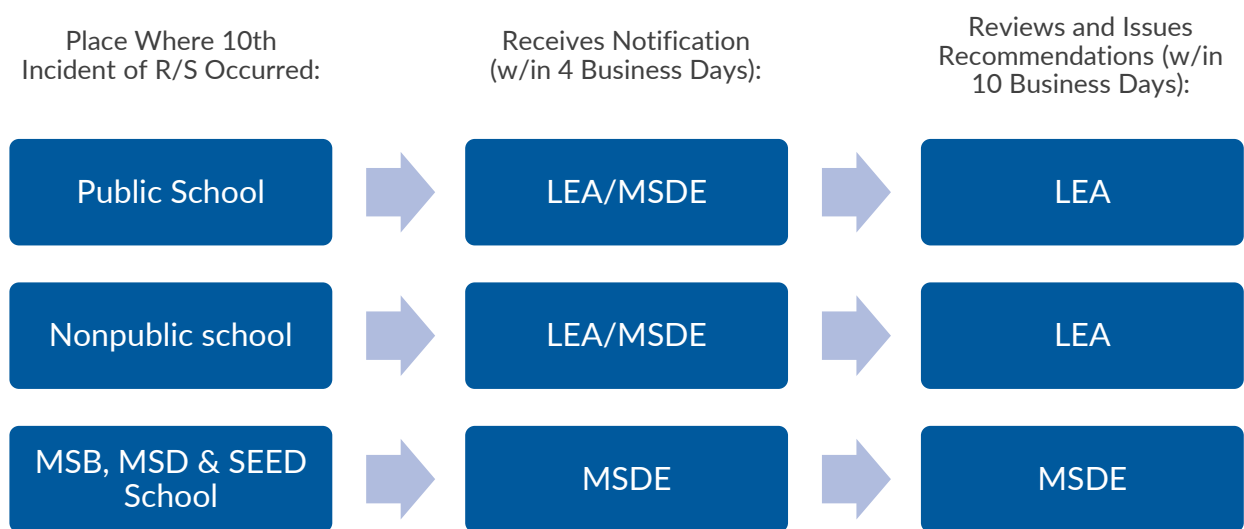
When the 10th incident of restraint and/or seclusion occurs for a student within one school year, the school must notify the LEA and the MSDE within four (4) business days:

- LEAs may conduct the notification to the MSDE.
- Public agencies that are not public schools (i.e., Maryland School for the Blind and Maryland School for the Deaf) only need to notify the MSDE.

Upon receipt of notification, within 10 business days, the LEA (or MSDE for MSB, MSD, and The SEED School) must:

- Review the student's case, including the circumstances of each incident of restraint or seclusion;
- Assess the public school or nonpublic school's pattern of behavioral health interventions to evaluate whether the public school or nonpublic school could use less restrictive behavioral health interventions; and
- Share recommendations with the MSDE and the public school or nonpublic school (or with the public agency).

Notification, Review, and Recommendations Flowchart



FREQUENTLY ASKED QUESTIONS

1. What interventions should be used prior to the use of restraint or seclusion with a student with a disability?

School personnel are required to create a positive culture and institute an integrated tiered system of supports that include an array of trauma-informed positive behavior interventions, strategies, and supports to increase or decrease targeted student behaviors. In addition, LEAs/PAs, and nonpublic schools must proactively consider the social, emotional, academic, and behavioral needs of their individual students. Less intrusive, nonphysical strategies must be unsuccessfully attempted (and fail) or be considered (and determined inappropriate) prior to the use of restraint or seclusion. If a student with a disability is manifesting challenging behaviors, the IEP team must consider: i) instructional and behavioral interventions; ii) a functional behavior assessment (FBA) and corresponding behavioral intervention plan (BIP); and iii) trauma-informed interventions as appropriate.

[COMAR 13A.08.04.03]

2. May restraint or seclusion be included on a student's IEP and BIP?

Once restraint or seclusion has been used and school personnel have made a student-specific determination that it may need to be used through intentional conversation and discussion in the IEP process and development of the IEP as outlined in Question #2, restraint or seclusion may be included on a student's BIP and IEP to address the student's behavior in a crisis situation where it is necessary to protect the student or another individual from imminent serious physical harm. The IEP document facilitates the IEP Team's decision-making process for the anticipated use of restraint (or seclusion) through the following steps:

- Reviewing available data to identify any contraindications to the use of restraint or seclusion based on medical history or past trauma, including consultation with medical or mental health professional as appropriate;
- Identifying the less intrusive, nonphysical interventions that will be used to respond to the student's behavior prior to the use of restraint or seclusion in an emergency situation; and
- Obtaining written consent from the parent, consistent with Education Article §8-405, Annotated Code of Maryland.

[COMAR 13A.08.04.05A(1)(b); COMAR 13A.08.04.05B(2)]

3. Does adding restraint or seclusion to a student's IEP and BIP change the circumstances under which these interventions may be used?

No. Restraint or seclusion, even if added to a student's BIP and IEP, may only be used to address the student's behavior in an emergency situation. An emergency situation arises when restraint or seclusion is necessary to protect a student or other person from imminent, serious, physical harm, and may only be used after less intrusive, nonphysical interventions have failed or been determined inappropriate.

[MD Code, Education, § 7-1102]

4. Is parental consent required before an IEP team may include restraint and/or seclusion on the IEP and BIP?

The IEP team must obtain the written consent of the parent before restraint and/or seclusion is added to the IEP and BIP. If the parent does not provide written consent at the IEP meeting, the IEP team must send the parent written notice within 5 business days of the IEP team meeting that states: i) the parent has the right to either consent or refuse to consent to the use of restraint or seclusion; and ii) if the parent does not provide written consent or a written refusal within 15 business days of the IEP team meeting, the IEP team may implement the proposed use of restraint or seclusion. If the parent provides a written refusal, the IEP team may use the dispute resolution options listed in Education Article §8-413, Annotated Code of Maryland, to resolve the matter.

[COMAR 13A.08.04.05C(6)]

5. What happens if an emergency situation arises, but the parent refused restraint or seclusion?

Restraint or seclusion may be used if there is an emergency situation and 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. This is the case regardless of whether the parent has provided written consent or a written refusal to include restraint or seclusion on a student's BIP and IEP. In any event, each time restraint or seclusion is used, parents must be provided oral or written notification within 24 hours, unless otherwise provided for in a student's IEP and BIP. Additionally, an IEP team meeting must be conducted within ten (10) business days of the incident for any student whose IEP and BIP do not include restraint and/or seclusion.

[COMAR 13A.08.04.05A(5); COMAR 13A.08.04.05B(9)]

6. What must occur if restraint or seclusion is added to a student's IEP and BIP?

If restraint or seclusion is added to the IEP and BIP, the student's IEP and BIP must specify how often the IEP team must meet to review or revise, as appropriate, the student's IEP and BIP, in accordance with COMAR 13A.05.01 and COMAR 13A.08.03. When an IEP team meets to review or revise a student's IEP and BIP, the IEP team must consider:

- Existing health, physical, psychological, and psychosocial information, including any contraindications to the use of restraint or seclusion based on medical history or past trauma;
- Information provided by the parent;
- Observations by teachers and related service providers;
- The student's current placement; and
- The frequency and duration of restraints or seclusion events that occurred since the IEP team last met.

[COMAR 13A.08.04.05C(3)-(4)]

7. What must occur if physical restraint or seclusion is used but is not included on a student's BIP and IEP?

If restraint or seclusion is used for a student with a disability, and the IEP and BIP do not include the use of restraint or seclusion, the IEP team must meet, in accordance with COMAR 13A.08.03, within 10 business days of the incident to consider the need for a functional behavioral assessment, developing appropriate behavioral interventions, revisions to the IEP, and implementing or revising a BIP.

[COMAR 13A.08.04.05C(2)]

For example, Sarah is a kindergarten student at Maryland Elementary School with an IEP, receiving special education services under the category of Developmental Delay. Sarah's IEP does not include restraint, and the IEP team has not completed an FBA and a BIP. During a transition from lunch back into the classroom, Sarah became agitated and began engaging in self-injurious behavior that could result in serious bodily injury if left unaddressed (i.e. banging her head on a concrete wall). After attempting multiple less intrusive interventions to calm and de-escalate Sarah, a staff member trained in Crisis Prevention Intervention physically restrained Sarah.

Following the incident, the school notified the parent via a phone call that afternoon. Staff involved documented the incident using an approved form and met to debrief. The IEP team scheduled a meeting within 10 days of the incident to review what occurred, Sarah's behavior data, and to consider the need for an FBA. The team revised the IEP as appropriate.

8. When can a nonpublic school use seclusion as a behavioral intervention for a student?

A nonpublic school may not use seclusion as a behavioral health intervention for a student unless:

- Seclusion is necessary to protect the student or another individual from imminent, serious physical harm;
- Other, less intrusive interventions have failed or been demonstrated to be inappropriate for the student;
- A qualified health care practitioner, as defined in the Health Care Occupations Article is on site and is directly observing the use of seclusion;
- The health care practitioner determines that seclusion is not contraindicated for the physical, psychological, or psychosocial health of the student;
- If the door to the room in which the student is being secluded has a locking mechanism, the locking mechanism is engaged only if held in place by an individual or, if operated electronically, automatically releases in the case of an active fire alarm; and

The period of seclusion lasts the lesser of:

- 30 minutes; or
- A point in time during which the student no longer poses a threat of imminent, serious physical harm.

9. What happens if a student who has an Individualized Education Program (IEP) is placed in seclusion in a nonpublic school?

In consultation with the health care practitioner who observed the use of seclusion, the IEP team, which includes the parent, shall review the student's physical, psychological, and psychosocial health history to determine whether seclusion is contraindicated for the student. A determination of whether seclusion is contraindicated for the student shall be made at each annual review of the student's IEP and within 10 days of a student's placement being changed.

If a student's behavior is adversely affected after being placed in seclusion, the nonpublic school shall convene an IEP team meeting on an expedited basis or at the earliest opportunity to discuss alternative behavioral health treatments/interventions.

10. What additional steps must an IEP team take if a student at a nonpublic school is secluded?

Regardless of its inclusion on the IEP and BIP, if the student is adversely impacted by the use of seclusion, the new legislation requires the IEP team to convene a meeting to discuss. See Question #9. While the statute does not require this for the use of physical restraint, it is the expectation of MSDE that the LEA hold an IEP meeting if the student is adversely impacted by the use of physical restraint.

While a team may have parental consent to use these interventions, it does not remove the IEP team's obligation to monitor progress and revise the IEP and/or BIP to provide a FAPE, including positive behavioral interventions. The regulations require that the IEP or BIP specify how often the IEP team will meet to review or revise the student's IEP or BIP. The DEI/SES expects IEP teams to meet before restraint and/or seclusion are used 10 or more times.

[MD Code, Education, § 7-1102(d)(2); COMAR 13A.08.04.05C(3)]

For example, Bobby is an 8-year-old elementary student with an IEP at Maryland State Elementary school. Bobby is eligible for special education services under the category of Other Health Impairment. With his parent's consent, Bobby's IEP and BIP include the use of restraint when he physically attacks staff or other students by attempting to strangle. During an unstructured break time, Bobby was given access to an iPad, but when the break ended, Bobby began engaging in inappropriate behavior. Staff were unable to de-escalate him, and he physically attacked staff by placing his arms around staff's neck and attempting to strangle. Staff attempted to block the aggression, but Bobby continued to escalate and became more aggressive and his physical attack intensified. A trained staff member placed Bobby in a restraint consistent with Crisis Prevention Intervention. During the hold, Bobby continued to yell and attempted to head-butt the staff member implementing the restraint. The restraint lasted 2 minutes.

Staff contacted Bobby's parent via phone that day. The staff involved documented the incident using an approved form and met to debrief. The IEP and BIP specifies how often Bobby's IEP team must meet to review his IEP and BIP. The team, during the debrief, considered whether the review timelines on the IEP and BIP were appropriate or whether they needed to call an IEP meeting sooner to address the Bobby's behavior and the future use of restraint and other behavioral strategies. To make this determination, they reviewed his behavior data, including the number of restraints, the frequency of restraints, Bobby's pattern of behaviors leading up to the incident(s) of restraint, and other data as appropriate. During the call to Bobby's parent, staff discussed the parent's experiences with Bobby's displayed behavior.

If after reviewing all of the data, staff identify progress in Bobby's behaviors and the successful impact of implemented interventions, staff may decide not to call an IEP team meeting. For example, progress could be a consistent reduction in the frequency of restraint, the length of restraint, or the student's ability to use taught coping strategies. It is important for the team to consult with the parent in making this decision.

Similarly, if after reviewing all the data, Bobby's staff cannot identify progress in his behavior patterns or the successful use of implemented interventions, the IEP team should hold a meeting. For example, evidence that the use of restraint remains the same or increases, or that Bobby has not successfully learned replacement behaviors can indicate a lack of progress. At the IEP team meeting, members must review data, consider whether new or additional evaluations are necessary, and revise the IEP and BIP as appropriate to address Bobby's behavior, including training all staff who interact with the student.

11. In a nonpublic school, who is considered a qualified health care professional, and what must s/he do before using seclusion?

The following is considered a health care professional:

- A physician, licensed to practice under Title 14 of the Health Occupations Article;
- A psychologist, licensed to practice under Title 18 of the Health Occupations Article;
- A clinical social worker, licensed to practice under Title 19 of the Health Occupations Article;
- A registered nurse, licensed to practice under Title 8 of the Health Occupations Article;
- A clinical professional counselor, licensed to practice under Title 17 of the Health Occupations Article;

Before a health care professional may use seclusion as a behavioral health intervention for a student in a nonpublic school, the health care practitioner shall:

- Have received training in all topics required under COMAR 13A.08.04.06, in effect on June 30, 2022; and
- Be clinically familiar with the student.

12. When is a seclusion incident considered ended?

A seclusion incident shall be considered ended if at any moment during the incident the student is no longer prevented from leaving, is removed from a room, an enclosure, or other space, or an adult engages with the student in a supportive manner to support the de-escalation process. It is best practice to notify the student that seclusion has ended, as appropriate. Please note: If, after a seclusion incident has ended as described above, nonpublic school determines that it is necessary to place the student in seclusion again, the subsequent confinement of the student in the room, enclosure, or other space, shall be considered a separate seclusion incident and be documented as such.

13. What if the staff person is outside and repeatedly opens the door to see if the child is ready to exit and then closes the door because the situation is still an emergency?

A student in seclusion must be observed at all times and the space utilized should provide staff with an adequate view of the student from all angles. An incident of seclusion ends when the door is opened, and a staff member begins to interact with the student for purposes of assessing the situation and/or de-escalation.

If after a seclusion incident has ended, the nonpublic school staff determines that it is necessary to place the student in seclusion again, the subsequent confinement of the student in the room, enclosure, or other space, shall be considered a separate seclusion incident and documented as such.

14. Can exclusion be used with a student with a disability?

Exclusion 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.

Exclusion is allowed, but not required, in the following circumstances:

- If the student's behavior unreasonably interferes with the student's learning or the learning of others;
- If the student's behavior constitutes an emergency and exclusion 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;
- If exclusion is requested by the student; or
- If supported by the student's behavior intervention plan.

Any setting used for exclusion shall:

- Provide personnel with the ability to see the student at all times;
- Provide adequate lighting, ventilation, and furnishings; and
- Be unlocked, with the door open, free of barriers that prevent egress.

The exclusion may not last longer than thirty (30) minutes and students must be supervised at all times.

While exclusion may be allowed in a particular situation, it should not be staff's first response to challenging behavior. When a student is excluded from the classroom, the child is removed from an opportunity to engage in instruction and participate with their peers. Furthermore, for some students who engage in avoidant behavior, exclusion reinforces inappropriate behavior.

If a student with an IEP is repeatedly excluded, the IEP team should consider what additional services and supports are necessary for the student to be available for learning and make progress on their IEP goals. If a student with a disability experiences an excessive period of exclusion, consistent with COMAR 13A.08.03, the IEP team must follow procedures to determine whether the student experienced a change in placement.

If a student without a disability is excessively excluded, staff should consider whether the student should be referred to the IEP team for evaluation.

[COMAR 13A.08.04.01, COMAR 13A.08.04.04]

Section IV: Resources

LEGISLATION

House Bill 1255 (Md. Ed. Art. Chapter 31)– Education – Physical Restraint and Seclusion – Limitations, Reporting, and Training. This link contains the enrolled bill, which went into effect on July 1, 2022.

REGULATIONS

Code of Maryland Regulations (COMAR) Required training for qualified health care practitioners to use seclusion as a behavioral health intervention in a nonpublic school: COMAR 13A.08.04.06.

Licenses for health care professionals:

- Licensed physician Title 14 of the Health Occupations Article;
- Licensed psychologist Title 18 of the Health Occupations Article;
- Licensed clinical social worker Title 19 of the Health Occupations Article;
- Licensed registered nurse Title 8 of the Health Occupations Article;
- Licensed clinical professional counselor Title 17 of the Health Occupations Article;

MSDE GUIDANCE

The [Maryland Student Records System Manual 2020](#) provides instructions and forms to assist in the maintenance of student records including enrollment, student attendance, student discipline, and promotion.

Consistent with MD Code, Education, § 7-427.1, MSDE published [A Trauma-Informed Approach for Maryland Schools \(2021\)](#). This guidance provides LEAs with a framework to establish a holistic approach to education, through a multi-tiered system of support, in which all teachers, school administrators, staff, students, families, and community members recognize and effectively respond to the behavioral, emotional, relational, and academic impact of stress on those within the school system.

U.S. DEPARTMENT OF EDUCATION GUIDANCE

U.S. Department of Education - January 17, 2019 - Initiative to Address the Inappropriate Use of Restraint and Seclusion to Protect Children with Disabilities, Ensure Compliance with Federal Laws. ... “The only way to ensure the success of all children with disabilities is to meet the needs of each child with a disability. <https://www.ed.gov/news/press-releases/us-department-education-announces-initiative-address-inappropriate-use-restraint-and-seclusion-protect-children-disabilities-ensure-compliance-federal-laws>

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

U.S. Department of Education, Office for Civil Rights (OCR) - December 28, 2016 - Guidance letter and series of questions and answers to inform school districts how the use of restraint and seclusion may result in discrimination against students with disabilities in violation of Federal laws that prohibit disability

discrimination, including Section 504 of the Rehabilitation Act of 1973 (Section 504).

<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-restraint-seclusion-ps.pdf>

U.S. Department of Education, Office of Special Education and Rehabilitative Services - July 19, 2022 - *Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders* - A guidance document that highlights best practices for responding to inappropriate student behavior while creating safe, supportive, and predictable learning environments. <https://sites.ed.gov/idea/files/guide-positive-proactive-approaches-to-supporting-children-with-disabilities.pdf>

Appendix A: Physical Restraint and Seclusion Clarification

What is physical restraint?

I. LEGAL DEFINITION

State law defines physical restraint. See Md. Code, Education § 7-1101(d).

Physical Restraint IS...	Restraint IS NOT...
<p>A personal restriction that immobilizes a student or reduces the ability of a student to move their torso, arms, legs, or head freely that occurs during school hours.</p>	<p>Briefly holding a student to calm or comfort the student;</p> <p>Holding a student’s hand or arm to escort the student safely from one area to another;</p> <p>Moving a disruptive student who is unwilling to leave the area if other methods such as counseling have been unsuccessful;⁴ or</p> <p>Breaking up a fight in the school building or on school grounds.</p>

II. OPERATIONAL GUIDANCE

(A) Additional Clarification

When school staff implement methods to maintain physical control by restricting the movement of any part of the student’s body, it is a physical restraint – even when staff are encouraging, inducing, or forcing a student to move to an alternate location. This is distinguishable from an escort, where the student’s bodily movement is not restricted in any way and the student is not resistant to the relocation. For example, if staff hold a hand or place a hand on the student’s back as the student willingly moves with the staff member to another location, this is an escort and not a physical restraint.

(B) Examples

Examples of Physical Restraint are...	Examples of actions that are NOT Physical Restraint are...
<p>Holding or moving a student against their will, including:</p> <p>A transport that immobilizes any part of the body, or</p> <p>Moving a student in a position that would not occur naturally.</p>	<p>Holding a hand or placing a hand on the student’s back or elbow as the student willingly moves with the staff member to another location.</p>

⁴ “Transport” is a term used in specific behavior intervention training programs (e.g., *Crisis Prevention Intervention*). The term is not defined in the statute or regulations. A transport is NOT a physical restraint, as long as its use is not consistent with the definition of physical restraint in MD Code, Education, § 7-1101(d). See Question #12 for more information on physical escorts.

Examples of Physical Restraint are...	Examples of actions that are NOT Physical Restraint are...
<p>Holding a student to prevent impulsive behavior that threatens the student’s immediate safety, including;</p> <ul style="list-style-type: none"> Running in front of a car, or Climbing out a window. 	<p>Blocking a student’s access to an unauthorized or unsafe area when the student is free to move in another direction/location.</p>
<p>Holding a student to prevent imminent serious physical harm to self or another, such as:</p> <ul style="list-style-type: none"> Hitting another individual with a weighted or sharp object; or Repeated, forceful head banging against a hard immovable surface. 	<p>Breaking up a fight by separating students or stepping between students physically fighting.</p>

III. WHEN MAY SCHOOL STAFF USE PHYSICAL RESTRAINT?

Under State law, physical restraint and seclusion are behavior interventions that may only be used in limited, emergency circumstances. Local education agencies (LEAs), public agencies (i.e., Maryland School for the Blind, Maryland School for the Deaf, and SEED School), and nonpublic special education schools may not use physical restraint unless:

- Physical restraint is necessary to protect the student or another individual from imminent serious physical harm; and
- Other, less intrusive, nonphysical interventions have failed or been demonstrated to be inappropriate for the student.

What is seclusion?

I. LEGAL DEFINITION

Seclusion is defined in State law. See Md. Code, Education § 7-1101(f).

Seclusion IS...	Seclusion IS NOT...
<p>The confinement of a student alone in a room, an enclosure, or any other space from which the student is physically prevented from leaving during school hours.</p>	<p>A behavior intervention plan of separating a student by placing the student:</p> <ul style="list-style-type: none"> - into a nonlocked room from which the student is allowed to leave; or - within a separate location in a classroom from which the student is not physically prevented from leaving.

II. OPERATIONAL GUIDANCE

(A) Additional Clarification

When school staff implement methods to isolate a student alone in an area and prevent the student from leaving the space, it is seclusion – even when the space does not have a door or walls. This is distinguishable from exclusion, where the student can leave the setting at will. For example, if staff are in a room with the student and attempting supportive interactions to assist the student in regaining control, this is exclusion and not seclusion.

(B) Examples

Examples of Seclusion are...	Examples of actions that are NOT Seclusion are...
<p>Placing a student alone in a location that they are prevented from leaving, such as:</p> <ul style="list-style-type: none"> A room with a closed locked door; A space with partitions that isolates the student and prevents egress; or Using mats to create a blocked area that the student is unable to leave. 	<p>The student is in a location observed by a staff member and is allowed to leave of their free will.</p>

Examples of Seclusion are...	Examples of actions that are NOT Seclusion are...
<p>A student in a location with a staff member who is preventing the child from leaving and NOT engaging the student in a supportive matter, such as:</p> <ul style="list-style-type: none"> A staff member physically blocking the doorway while not supportively engaging with the student; or A staff member using physical proximity to intimidate the student into not leaving the space while not supportively engaging with the student. 	<p>A student is in a location with a staff member who is interacting with the student supportively, even while not allowing the student to leave.</p>

III. WHEN MAY SCHOOL STAFF USE SECLUSION?

Seclusion is banned in all Maryland public schools and public agencies. A nonpublic special education school may use seclusion only if:

- Seclusion is necessary to protect the student or another individual from imminent serious physical harm;
- Other, less intrusive interventions have failed or been demonstrated to be inappropriate for the student;
- A qualified health care practitioner is on site and is directly observing the student during the seclusion;
- The health care practitioner concludes that seclusion is not contraindicated for the physical, psychological, or psychosocial health of the student;
- If the door to the room in which the student is being secluded has a locking mechanism, the locking mechanism is engaged only if held in place by an individual or, if operated electronically, automatically releases in the case of an active fire alarm; and
- The period of seclusion lasts the lesser of:
 - 30 minutes; or
 - A point in time during which the student no longer poses a threat of imminent serious physical harm.

Appendix B: Stakeholder Focus Group

STAKEHOLDER FOCUS GROUP

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APPENDIX C: MSDE CROSS-DEPARTMENTAL WORK GROUP

MSDE CROSS-DEPARTMENTAL WORK GROUP

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