

TO: Task Force on Restraint and Seclusion

FROM: Deborah Nelson, Section Chief, School Safety and Climate /
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RE: Background for First Meeting – Prohibition and Authorization

I. Introduction

The purpose of this memo is to provide background information for the first meeting of the Task Force on Restraint and Seclusion, which is scheduled for July 31, 2017. The agenda for the first meeting will include an overview of Senate Bill 786 (Chapter 611), which created the task force, as well as two substantive topics that the task force has been instructed to consider: 1) the circumstances under which, and the schools or types of schools in which, restraint and seclusion shall be prohibited; and 2) contraindications for restraint and seclusion, and who may authorize restraint and seclusion. What follows is a summary of current Code of Maryland Regulations (COMAR) provisions that relate to those two topics, which can serve as a starting point for the task force to recommend any changes it determines to be necessary. To provide a common language for discussion, the definitions of key terms can be found in Appendix A.

II. Prohibition

Restraint and seclusion are not generally favored as a behavior intervention. School personnel are encouraged to use an array of behavior interventions, strategies, and supports to increase or decrease targeted student behaviors (COMAR 13A.08.04.03A). School personnel can only use restraint or seclusion after less restrictive or alternative approaches have been considered and either attempted or determined to be inappropriate (COMAR 13A.08.04.03B(1)). If other approaches fail or are determined to be inappropriate, restraint or seclusion, when used, must be used in a humane, safe, and effective manner, without intent to harm or create undue discomfort, and consistent with known medical or psychological limitations and the student's behavioral intervention plan (COMAR 13A.08.04.03B(2)).¹

a. Restraint (Physical)

The use of physical restraint is prohibited in public agencies and nonpublic schools, except in three situations (COMAR 13A.08.04.05A(1)(a)): First, physical restraint may be used if there is an emergency situation and physical restraint is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate. Second, physical restraint may be

¹ The documentation requirements that apply whenever school personnel use restraint or seclusion will be discussed at the fourth meeting in the context of monitoring compliance. *See* COMAR 13A.08.04.05A(3) and B(6)-(8).

used if the student's behavioral intervention plan or IEP describes the specific behaviors and circumstances in which physical restraint may be used. Third, physical restraint may be used if the parents of a nondisabled student have otherwise provided written consent to the use of physical restraint while a behavior intervention plan is being developed.

In the event that physical restraint is used, there are specific requirements related to who is authorized to use it and how it can be implemented. With regard to who is authorized, COMAR states that physical restraint must only be applied by school personnel who are trained in its appropriate use (COMAR 13A.08.04.05A(1)(b)).² With regard to how it is implemented, COMAR states that school personnel may only use reasonable force as is necessary to protect a student or other people (e.g., students, staff) from imminent, serious, physical harm (COMAR 13A.08.04.05A(1)(c)). More specifically, physical restraint must be removed as soon as the student is calm, and may not exceed 30 minutes (COMAR 13A.08.04.05A(1)(d)).

There are also certain restrictions on the use of physical restraint by school personnel. In applying physical restraint, school personnel may not: (i) place a student in a face down position; (ii) 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 (iii) straddle a student's torso (COMAR 13A.08.04.05A(1)(e)).

b. Restraint (Mechanical)

The use of mechanical restraint is likewise prohibited in public agencies and nonpublic schools, unless a public agency or nonpublic school is certified by and meets the requirements of the Joint Commission for the Accreditation of Health Care Organizations (COMAR 13A.08.04.05A(2)(a)). The use of a protective or stabilizing device by school personnel is not prohibited, however, if it is: (i) prescribed by a health professional; or (ii) for a student with a disability, used in accordance with the student's IEP or behavior intervention plan (COMAR 13A.08.04.05A(2)(b)).

c. Seclusion

The use of seclusion is prohibited in public agencies and nonpublic schools, except in three situations (COMAR 13A.08.04.05B(1)): First, seclusion may be used if there is an emergency situation and seclusion is necessary to protect a student or another person after other less intrusive interventions have failed or been determined to be inappropriate. Second, seclusion may be used if the student's IEP or behavioral intervention plan describes the specific behaviors and circumstances in which seclusion may be used. Third, seclusion may be used if the parents of a nondisabled student have otherwise provided written consent for the use of

² The training requirements that apply to restraint and seclusion will be discussed at the second meeting in the context of individualizing interventions based on a student's history and disability. *See* COMAR 13A.08.04.06.

seclusion while a behavior intervention plan is being developed. These are the same exceptions that apply to the prohibition of physical restraint.

In the event that seclusion is used, there are specific requirements related to who is authorized to use it and how it is implemented. With regard to who it is authorized, seclusion must only be applied by school personnel trained in its appropriate use (COMAR 13A.08.04.05B(4)). With regard to how it is implemented, school personnel must: (i) view a student placed in seclusion at all times; and (ii) provide the student an explanation of the behavior that resulted in the removal and instructions on the behavior required to return to the learning environment (COMAR 13A.08.04.05B(3)). In addition, a seclusion event must: (i) be appropriate to the student's developmental level and severity of the behavior; (ii) may not restrict the student's ability to communicate distress; and (iii) may not exceed 30 minutes (COMAR 13A.08.04.05B(5)). This is the same time limit that is placed on the use of physical restraint.

There are also certain restrictions concerning the room that is used. At a minimum, a room for seclusion must: (i) be free of objects and fixtures with which a student could self-inflict bodily harm; (ii) provide school personnel an adequate view of the student from an adjacent area; and (iii) provide adequate lighting and ventilation (COMAR 13A.08.04.05B(2)).

d. Non-Prohibited Actions

The regulations discussed above do not prohibit: 1) school personnel from initiating appropriate student disciplinary actions pursuant to Education Article § 7-305, Annotated Code of Maryland, COMAR 13A.08.01.11, and COMAR 13A.08.03 [these provisions collectively refer to suspension and expulsion, including removal procedures for students with disabilities]; or 2) law enforcement, judicial authorities, or school security personnel from exercising their responsibilities, including the physical detainment of a student or other person alleged to have committed a crime or posing a security risk in accordance with relevant law, regulation, policy, or procedures (COMAR 13A.08.04.03C).

III. Authorization

The process to authorize restraint or seclusion depends on whether the student has been identified as a student with a disability. Ultimately, the written consent of a parent is required to authorize the use of restraint or seclusion for both students with and without disabilities, except in the event of an emergency situation.

If restraint or seclusion is used for a student who has *not* been identified as a student with a disability, the student must immediately be referred to the school's pupil services team (e.g., student support team) or an IEP team. COMAR 13A.08.04.05C(1). In that case, restraint or seclusion is authorized if the parents of the nondisabled student have provided written consent to the use of restraint or seclusion while a behavior intervention plan is being developed (COMAR 13A.08.04.05A(1)(a)(iii) & B(1)(c)).

If restraint or seclusion is used for a student with a disability, and the student's IEP or behavior intervention plan does ***not*** include such use, the IEP team must meet within 10 business days of the incident to consider: (i) the need for a functional behavioral assessment; (ii) developing appropriate behavioral interventions; and (iii) implementing a behavior intervention plan. COMAR 13A.08.04.05C(2). Please note: A recent amendment to Education Article § 8-405(f), effective July 1, 2017, requires that an IEP team ***must*** obtain written consent from a parent of a student with a disability if it proposes to include restraint or seclusion in the IEP to address the student's behavior.

For students with disabilities, restraint or seclusion is authorized if the student's IEP or behavioral intervention plan describes the specific behaviors and circumstances in which restraint or seclusion may be used (COMAR 13A.08.04.05A(1)(a)(ii) & B(1)(b)). The student's IEP or behavior intervention plan must also specify how often the IEP team will meet to review or revise those documents, as appropriate (COMAR 13A.08.04.05C(3)). When an IEP team meets to review or revise a student's IEP or behavior intervention plan, the IEP team must consider: (i) existing health, physical, psychological, and psychosocial information; (ii) information provided by the parent; (iii) observations by teachers and related service providers; and (iv) the student's current placement (COMAR 13A.08.04.05C(4)).

Appendix A: Definitions in COMAR 13A.08.02

1. **“Behavior intervention plan”** means a proactive plan designed to address problem behaviors exhibited by a student in the educational setting through the use of positive behavioral interventions, strategies, and supports.
2. **“IEP”** means an individual education program as defined and developed in accordance with COMAR 13A.05.01. [That chapter of COMAR outlines the provision of a free appropriate public education to students with disabilities in accordance with the Individuals with Disabilities Education Act (IDEA).]
3. **“Mechanical restraint”** means 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. Mechanical restraint does not include a protective or stabilizing device.
4. **“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 in accordance with COMAR 13A.09.10. [That chapter of COMAR outlines the requirements for educational programs in nonpublic schools.]
5. **“Physical restraint”** means the use of physical force, without the use of any device or material that restricts the free movement of all or a portion of a student’s body. Physical restraint does not include: (i) briefly holding a student to calm or comfort the student; (ii) holding a student’s hand or arm to escort the student safely from one area to another; (iii) moving a disruptive student who is unwilling to leave the area if other methods such as counseling have been unsuccessful; or (iv) intervening in a fight in accordance with Education Article § 7-307, Annotated Code of Maryland. [That section of the Education Article outlines the authority to intervene in fights, provided that the degree and force of the intervention is reasonably necessary to prevent violence, restore order, and to protect the safety of the combatants and surrounding individuals.]
6. **“Public agency”** means a State or local government or quasi-government entity responsible for the provision of a free appropriate public education to students with disabilities. Public agency includes local school systems, the SEED School, the Department of Education, the Department of Health and Mental Hygiene, the Department of Juvenile Services, the Maryland School for the Blind, the Maryland School for the Deaf, and the Department of Labor, Licensing, and Regulation.
7. **“Restraint”** means the use of a physical or mechanical restraint.
8. **“School personnel”** means an individual employed by a public agency or nonpublic school.
9. **“Seclusion”** means the confinement of a student alone in a room from which the student is physically prevented from leaving.