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**TO:** Members of the State Board of Education

**FROM:** Karen B. Salmon, Ph.D.

**DATE:** December 5, 2017

**SUBJECT:** COMAR 13A.08.04  
*Student Behavior Interventions*  
**PERMISSION TO PUBLISH**

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**PURPOSE:**

Request permission to publish proposed revision to COMAR 13A.08.04 – *Student Behavior Interventions*.

**REGULATION PROMULGATION PROCESS:**

Under Maryland law, a state agency, such as the State Board, may propose a new or amended regulation whenever the circumstances arise to do so. After the State Board votes to propose such a regulation, the proposed regulation is sent to the Administrative, Executive, and Legislative Review (AELR) Committee for a 15 day review period. If the AELR Committee does not hold up the proposed regulation for further review, it is published in the Maryland Register for a 30-day public comment period. At the end of the comment period, Maryland State Department of Education (MSDE) staff reviews and summarizes the public comments. Thereafter, MSDE staff will present a recommendation to the State Board of Education to either: (1) adopt the regulation in the form it was proposed; or (2) revise the regulation and adopt it as final because the suggested revision is not a substantive change; or (3) revise the regulation and re-propose it because the suggested revision is a substantive change. At any time during this process, the AELR Committee may stop the promulgation process and hold a hearing. Thereafter, it may recommend to the Governor that the regulation not be adopted as a final regulation or the AELR Committee may release the regulation for final adoption.

**BACKGROUND:**

In 2017, the Maryland General Assembly enacted Senate Bill 786 – Education – Restraint and Seclusion – Consideration and Reporting (2017 Md. Laws, Chap. 611). The legislation required the MSDE to submit proposed regulations to the State Board by December 2017. The legislation also required the MSDE to convene a Task Force on Restraint and Seclusion to consider the following:

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

- 2) Contraindications for restraint and seclusion and who may authorize restraint and seclusion;
- 3) Definitions of “positive behavioral supports,” “behavior interventions,” and “trauma informed interventions;”
- 4) Training requirements for school staff regarding behavioral interventions;
- 5) Minimum requirements for policies and procedures to be developed by local school systems, state operated programs, and nonpublic schools; and
- 6) Standards for monitoring compliance by local school systems, State operated programs, and nonpublic schools.

The Task Force on Restraint and Seclusion completed its report, which was shared with the State Board at its meeting on September 19, 2017.

**EXECUTIVE SUMMARY:**

The proposed regulations add and clarify definitions, and strengthen provisions which require a continuum of behavior interventions to be a part of a student’s behavior intervention plan (BIP) or individualized education program (IEP). The proposed regulations retain the requirement that restraint and seclusion are to be utilized in emergency situations and add a requirement to ensure that any contraindications based on medical history or past trauma are considered. If restraint or seclusion are included in an IEP or BIP, parental consent is required consistent with Education Article §8-405, Annotated Code of Maryland.

**ACTION:**

Request permission to publish amendments to COMAR 13A.08.04 – *Student Behavior Interventions*.

13A.08.04.02 - Student Behavior Interventions

**.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(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] *a proactive, data-based, structured plan that is developed as a result of a functional behavioral assessment which is consistently applied by trained staff to reduce or eliminate a student's challenging behaviors and to support the development of appropriate behaviors and responses.*

(2) "Business day" has the meaning stated in COMAR 13A.08.03.

(2-1) Communicate.

(a) "Communicate" means to convey information verbally or nonverbally.

(b) "Communicate" includes, but is not limited to:

(i) Speech;

(ii) Gestures;

(iii) Symbols; and

(iv) American Sign Language.

(3) "Department" means the Maryland State Department of Education.

(4) "Exclusion" means 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.

(5) Functional Behavior Assessment.

(a) "Functional behavior assessment" means the systematic process of gathering information to guide the development of an effective and efficient behavior intervention plan for the problem behavior.

(b) "Functional behavior assessment" includes the:

(i) Identification of the functions of the problem behavior for the student;

(ii) Description of the problem behavior exhibited in the educational setting; and

(iii) Identification of environmental and other factors and settings that contribute to or predict the occurrence, nonoccurrence, and maintenance of the behavior over time.

(6) "IEP" means an individual education program as defined and developed in accordance with COMAR 13A.05.01.

(7) "IEP team" has the meaning stated in COMAR 13A.05.01.

**(8) Mechanical Restraint.**

(a) "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] *the use of any device or equipment to restrict a student's freedom of movement.*

(b) "Mechanical restraint" does not include [a protective or stabilizing device.] *devices implemented by trained school personnel, or used by a student, that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, including:*

*(i) Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;*

*(ii) Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;*

*(iii) Restraints for medical immobilization; or*

*(iv) Orthopedically prescribed devices that permit a student to participate in activities without risk of harm.*

(9) "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.

(10) "Parent" has the meaning stated in COMAR 13A.05.01.

**(11) Physical Restraint.**

(a) "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] *a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely.*

(b) "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] *A physical escort, which is the temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location;*

(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.

(12) "Positive behavior interventions, strategies, and supports" means [the application of affirmative school-wide and individual student specific actions, instruction, and assistance to encourage educational success] *the 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.*

(13) Protective or Stabilizing Device.

(a) "Protective or stabilizing device" 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 for the purpose of enhancing functional skills, preventing self-injurious behavior, or ensuring safe positioning of a person.

(b) "Protective or stabilizing device" includes:

(i) Adaptive equipment prescribed by a health professional, if used for the purpose for which the device is intended by the manufacturer;

(ii) Seat belts; or

(iii) Other safety equipment to secure students during transportation in accordance with the public agency or nonpublic school transportation plan.

(14) "Public agency" has the meaning stated in COMAR 13A.05.01.

(15) "Restraint" means the use of a physical or mechanical restraint.

(16) "School personnel" means an individual employed by a public agency or nonpublic school as defined in this chapter.

[(17) "Seclusion" means the confinement of a student alone in a room from which the student is physically prevented from leaving.]

*(17) Seclusion.*

*(a) "Seclusion" means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.*

*(b) "Seclusion" does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.*

(18) "Student with a disability" has the meaning stated in COMAR 13A.05.01.

*(19) "Trauma-informed intervention" means an approach that is informed by the recognition of the impact that trauma, including violence, abuse, neglect, disaster, terrorism, and war, may have on a student's physical and emotional health and ability to function effectively in an educational setting.*

13A.08.04.05

**.05 General Requirements for the Use of Restraint or Seclusion.**

A. Use of Restraint.

(1) Physical Restraint.

(a) *Except as provided in §A(1)(b) of this regulation, [T]the use of physical restraint is prohibited in public agencies and nonpublic schools[, unless:] until 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.*

(i) There is an emergency situation and physical restraint is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate;

(ii) The student's behavioral intervention plan or IEP describes the specific behaviors and circumstances in which physical restraint may be used; or

(iii) The parents of a nondisabled student have otherwise provided written consent to the use of physical restraints while a behavior intervention plan is being developed.]

(b) *Once physical restraint has been used or school personnel have made a student-specific determination that it may need to be used consistent with §A(1)(a) of this regulation, physical restraint may be included in a student's behavioral intervention plan or IEP to address the student's behavior in an emergency situation, provided that school personnel:*

(i) *Review available data to identify any contraindications to the use of physical restraint based on medical history or past trauma, including consultation with medical or mental health professionals as appropriate;*

(ii) *Identify the less intrusive, nonphysical interventions that will be used to respond to the student's behavior until physical restraint is used in an emergency situation; and*

(iii) *Obtain written consent from the parent, consistent with Education Article, §8-405, Annotated Code of Maryland.*

(b)c Physical restraint shall be applied only by school personnel who are trained in the appropriate use of physical restraint consistent with Regulation .06C of this chapter.

(c)d In applying physical restraint, school personnel shall only use reasonable force as is necessary to protect a student or other person from imminent, serious, physical harm.

(d)e Physical restraint:

- (i) Shall be removed as soon as the student is calm; and
- (ii) May not exceed 30 minutes.

**(e)f** 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.

(2) Mechanical Restraint.

(a) The use of mechanical restraint is 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.

(b) Regulation .04 of this chapter does not prohibit school personnel from using a protective or stabilizing device:

- (i) As prescribed by a health professional; or
- (ii) For a student with a disability, in accordance with the student's IEP or behavior intervention plan.

(3) Documentation of the Use of Restraint.

**(a) Each time a student is in a restraint, school personnel *involved in the restraint* shall *debrief and document*:**

- (i) Other less intrusive interventions that have failed or been determined inappropriate;
- (ii) The precipitating event immediately preceding the behavior that prompted the use of restraint;
- (iii) The behavior that prompted the use of a restraint;
- (iv) The names of the school personnel who observed the behavior that prompted the use of restraint; and
- (v) The names and signatures of the staff members implementing and monitoring the use of restraint.

(b) Documentation under §A(3) of this regulation shall include a description of the restraint event, including:

- (i) The type of restraint;
- (ii) The length of time in restraint;
- (iii) The student's behavior and reaction during the restraint; and
- (iv) The name and signature of the administrator informed of the use of restraint.

(4) The documentation described in §A(3) of this regulation shall be maintained in the student's educational record and available for inspection by the student's parent or legal guardian in accordance with COMAR 13A.08.02.

(5) Each time restraint is used, parents shall be provided oral or written notification within 24 hours, unless otherwise provided for in a student's behavior intervention plan or IEP.

#### **B. Use of Seclusion.**

(1) *Except as provided in §B(2) of this regulation, [T]he use of seclusion is prohibited in public agencies and nonpublic schools [unless:] until there is an emergency situation and 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.*

(a) There is an emergency situation and seclusion is necessary to protect a student or another person after other less intrusive interventions have failed or been determined to be inappropriate;

(b) The student's IEP or behavioral intervention plan describes the specific behaviors and circumstances in which seclusion may be used; or

(c) The parents of a nondisabled student have otherwise provided written consent for the use of seclusion while a behavior intervention plan is being developed.]

(2) *Once seclusion has been used or school personnel have made a student-specific determination that it may need to be used consistent with §B(1) of this regulation, seclusion may be included in a student's behavioral intervention plan or IEP to address the student's behavior in an emergency situation, provided that school personnel:*

(a) Review available data to identify any contraindications to the use of seclusion based on medical history or past trauma, including consultation with medical or mental health professionals as appropriate;

*(b) Identify the less intrusive, nonphysical interventions that will be used to respond to the student's behavior until seclusion is used in an emergency situation; and*

*(c) Obtain written consent from the parent, consistent with Education Article, §8-405, Annotated Code of Maryland.*

**(2)3** Seclusion Room.

(a) At a minimum, a room used for seclusion shall:

(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 *all angles [an adjacent area]*; and

(iii) Provide adequate lighting and ventilation.

*(b) The door of a seclusion room shall not be fitted with a lock unless it releases automatically when not physically held in the locked position by school personnel on the outside of the door.*

**(3)4** School personnel shall:

*(a) Remain in close proximity to the door of a seclusion room at all times;*

*(a)b [View] Actively observe* a student placed in seclusion at all times; and

*(b)c* Provide a student placed in seclusion with:

(i) An explanation of the behavior that resulted in the removal; and

(ii) Instructions on the behavior required to return to the learning environment.

**(4)5** Seclusion shall only be applied by school personnel trained in the appropriate use of seclusion consistent with Regulation .06C of this chapter.

**(5)6** A seclusion event:

(a) Shall be appropriate to the student's developmental level and severity of the behavior;

(b) May not restrict the student's ability to communicate distress; and

(c) May not exceed 30 minutes.

**(6)7** Documentation of Seclusion.

(a) Each time a student is placed in seclusion, school personnel *involved in the seclusion event shall debrief and document:*

- (i) Other less intrusive interventions that have failed or been determined inappropriate;
- (ii) The precipitating event immediately preceding the behavior that prompted the use of seclusion;
- (iii) The behavior that prompted the use of seclusion; and
- (iv) The names and signatures of the staff members implementing and monitoring the seclusion.

(b) The documentation under §B([6]7) of this regulation shall include a description of the seclusion event, including:

- (i) Justification for initiating the use of seclusion;
- (ii) The length of time in seclusion;
- (iii) The student's behavior and reaction during the seclusion; and
- (iv) The name and signature of the administrator informed of the use of seclusion.

([7]8) The documentation described in §B([6]7) of this regulation shall be maintained in the student's educational record and available for inspection by the student's parent or legal guardian in accordance with COMAR 13A.08.02.

([8]9) Unless otherwise provided for in the student's behavior intervention plan or IEP, each time seclusion is used, school personnel shall provide the student's parent with verbal notification or send written notice within 24 hours.

#### C. Referral to a Pupil Services or IEP Team.

(1) 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.

(2) 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, in accordance with COMAR 13A.08.03, within 10 business days of the incident to consider:

- (a) The need for a functional behavioral assessment;
- (b) Developing appropriate behavioral interventions; and

(c) Implementing a behavioral intervention plan.

(3) If restraint or seclusion is used for a student with a disability, and the IEP or behavior intervention plan includes the use of restraint or seclusion, the student's IEP or behavior intervention plan shall specify how often the IEP team shall meet to review or revise, as appropriate, the student's IEP or behavior intervention plan, in accordance with COMAR 13A.05.01 and 13A.08.03.

(4) When an IEP team meets to review or revise a student's IEP or behavior intervention plan, as specified in §C(3) of this regulation, the IEP team shall consider:

(a) Existing health, physical, psychological, and psychosocial information, *including any contraindications to the use of restraint or seclusion based on medical history or past trauma*;

(b) Information provided by the parent;

(c) Observations by teachers and related service providers; [and]

(d) The student's current placement[.]; *and*

(e) *The frequency and duration of restraints or seclusion events that occurred since the IEP team last met.*

(5) The local school system or nonpublic school shall provide the parent of the student with written notice in accordance with COMAR 13A.05.01.12A when an IEP team proposes or refuses to initiate or change the student's IEP or behavior intervention plan that includes the use of restraint or seclusion[.,].

[(6) A parent may request mediation in accordance with COMAR 13A.05.01.15B or a due process hearing in accordance with COMAR 13A.05.01.15C if the parent disagrees with the IEP team decision to propose or refuse to initiate or change:

(a) The student's IEP;

(b) The student's behavior intervention plan to use restraint or seclusion; or

(c) The student's placement.]

(6) *Parental Consent.*

(a) *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.*

(b) *If the parent does not provide written consent, the IEP team shall 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.*

*(c) 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.*

13A.08.04.06

**.06 Administrative Procedures.**

A. Each public agency and nonpublic school shall develop policies and procedures to address:

(1) A continuum of positive behavioral interventions, strategies, and supports for use by school personnel before exclusion, restraint, or seclusion;

(2) The prevention of self-injurious behaviors;

(3) Methods for identifying and defusing potentially dangerous behavior;

(4) The use and documentation of exclusion consistent with Regulation .04 of this chapter;

(5) The use of restraint consistent with Regulation .05A of this chapter; and

(6) The use of seclusion consistent with Regulation .05B of this chapter.

B. Each public agency and nonpublic school shall annually review policies and procedures and provide them to school personnel and parents as described in COMAR 13A.08.01.

C. Professional Development.

(1) Each public agency and nonpublic school shall provide professional development to [designated] school personnel *designated by a school administrator to use restraint or seclusion* on this chapter and the appropriate implementation of policies and procedures developed in accordance with §A of this regulation.

(2) At the beginning of each school year, each public agency and nonpublic school shall identify school personnel authorized to serve as a school-wide resource to assist in ensuring proper administration of exclusion, restraint, and seclusion.

(3) The school personnel described in §C(1) and §C(2) of this regulation shall receive training in current professionally accepted practices and standards regarding:

(a) Positive behavior interventions strategies and supports, including methods for identifying and defusing potentially dangerous behavior;

(b) *Trauma-informed intervention;*

(b)c) Functional behavior assessment and behavior intervention planning;

(c)d) Exclusion;

(d)e) Restraint and alternatives to restraint;

([e]f) Seclusion; and

([f]g) Symptoms of physical distress and positional asphyxia[.];

(h) *First aid and cardiopulmonary resuscitation (CPR); and*

(i) *Individualizing behavior interventions based on student characteristics, including disability, medical history, and past trauma.*

(4) The professional development described in §C(3) of this regulation shall include a written examination and physical demonstration of proficiency in the described skills and competencies.

D. Monitoring and Compliance.

(1) Each public agency and nonpublic school shall develop policies and procedures on:

(a) Monitoring the use of exclusion, restraint, and seclusion; and

(b) Receiving and investigating complaints regarding exclusion, restraint, and seclusion practices.

(2) The Department may monitor and request any information regarding any matter related to exclusion, restraint, or seclusion implemented by a public agency or nonpublic school. The Department shall provide written notice of the requested information and specify the time and the manner in which the public agency or nonpublic school shall respond to the request.