

# Allegany County Public Schools

## GUIDELINES ON THE USE OF RESTRAINT AND SECLUSION

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## Background

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 (non-public 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
- 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 seclusion incidents
- Requiring the LEA/PA/nonpublic school to develop corrective action if a system reports ten 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.

# Guidance for all Students

## A. Definitions

***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.

### ***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)]

### ***Restraint***

Restraint is defined as 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.

Restraint is NOT. . .

- ✓ Briefly holding a student 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 if other methods such as counseling have been unsuccessful, OR
- ✓ Breaking up a fight in the school building or on school grounds.

### ***Operational Guidance (MSDE Restraint and Seclusion: Implementation Guide, January 2023)***

**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.*

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 ACPS.

### ***Physical Escort***

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.

### ***Transport***

**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.

### ***Physical Restraint***

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)]

### ***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:

1. a student is alone in a space and
2. 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

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.

***Seclusion is prohibited in Maryland public schools.***

## B. Procedures

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

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

Upon receipt of notice from a public school or nonpublic school of the 10th incident Central office staff 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 recommendations with MSDE and the public school or nonpublic school.

The review and recommendations will 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.

ACPS will 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. 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.

### ***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)]

### ***What happens if restraint or seclusion is used, and the student has 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.

### ***Reporting Requirements***

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

- The number of physical restraint incidents, disaggregated by the student's 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.

In addition, on or before December 1 each year, ACPS shall:

- Submit to the Department a report on steps taken to encourage positive behavioral interventions, including:
  - 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; 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.

### **Requirements trained school staff must 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.

#### ***Restraint 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.

### ***Crisis Intervention Model***

ACPS has chosen the Crisis Prevention Institute's (CPI) Nonviolent Crisis Intervention Training (NCI) Program as a primary method of crisis intervention and as a last resort, physical restraint. Select ACPS staff are formally trained as NCI Trainers by CPI representatives and provide the appropriate professional development to school teams. Additionally, teams instructing in the areas of Emotional and Behavioral Support and Structured Learning Environment classrooms are trained using the Ukeru Systems, a physical alternative to restraint and seclusion.

The philosophy of both is in alignment with ACPS and is as follows:

- NCI provides a range of preventive strategies, de-escalation skills, and communication techniques.
- Participants learn psychological and physiological responses that will minimize the potential harm of disruptive and aggressive behavior.
- Nonviolent Crisis Intervention Training emphasizes the care, welfare, safety, and security of all staff and students.
- Objectives of NCI training include:
  - Prevention and De-escalation Strategies;
  - Decision Making;
  - Managing Behavioral Risk using Disengagement and/or Holding Skills; and
  - Postvention Approaches.

Ukeru is a crisis-prevention training program that offers a physical alternative to restraint and seclusion by providing a range of preventative strategies incorporating the core philosophies of Comfort versus Control and trauma-informed care.

Any questions concerning these procedures should be directed to the Director of Student Services and Special Education at 301-759-2084.

### **Debrief and Document** COMAR 13A.08.04.05)

Following each incident of restraint staff must meet to 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.
- The behavior that prompted the use of 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.

## Monitoring Procedures

ACPS will 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 all staff involved in the behavioral incident.
- Clear documentation of debrief discussions and decisions.
- Accurate and complete documentation of required components of an incident report.
- Documentation of one restraint or seclusion incident per form
- Clear descriptions of the incident including details of adult response to each student behavior/action
- Clear descriptions of the 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.
- 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 documents all considerations and decisions.
- IEP teams meet to discuss and respond to the lack of progress on behavior goals.

## Guidance for Students with Disabilities

If restraint 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 is used for a student with a disability, and the student's IEP or behavior intervention plan does not include the use of restraint, 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.

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.

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 10<sup>th</sup> incident of restraint and/or seclusion.

Education Article, § 8-413, Annotated Code of Maryland, to resolve the matter.

Once restraint or seclusion has been used, or 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, 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)]