

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 1166
 Ways and Means

(Delegate Ebersole)
 Education, Health, and Environmental Affairs

Education - Physical Restraint and Seclusion - Reporting and Training

This bill alters the requirements of annual reports each school must submit to the Maryland State Department of Education (MSDE) regarding the use of physical restraint and seclusion. Generally, reports must include more specific, verifiable data on incidents and policies to reduce the use of physical restraint or seclusion. The bill also requires that MSDE develop an accountability system, analyze data, determine trends, and publish findings relating to the use of physical restraint and seclusion. Lastly, the State Superintendent must adopt positive behavioral intervention training requirements for any employees who routinely interact with students. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: General fund expenditures increase by \$157,600 beginning in FY 2022 to hire two regular full-time staff members, as discussed below. Maryland School for the Deaf can meet the requirements of the bill with existing resources. Revenues are not affected.

| (in dollars) | FY 2022 | FY 2023 | FY 2024 | FY 2025 | FY 2026 |
|----------------|-------------|-------------|-------------|-------------|-------------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 157,600 | 187,300 | 193,000 | 199,900 | 207,000 |
| Net Effect | (\$157,600) | (\$187,300) | (\$193,000) | (\$199,900) | (\$207,000) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local school system expenditures increase by an indeterminate amount to collect and report data and provide new required training as discussed below. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary:

The bill specifies that, as part of a report on or before December 1 of each year, the number of physical restraint incidents and the number of seclusion incidents must be reported by each public and nonpublic school. MSDE must seek verification from any school that reports no such incidents and make recommendations to improve data collection. Additionally, MSDE must make recommendations for improvements in data collection and positive behavioral interactions to any public or nonpublic school that is unable to verify reported data.

Before adopting training requirements required by the bill, the State Superintendent must identify gaps in behavioral interventions, strategies, and supports. The training requirements adopted by the Superintendent must include evidence-based, trauma-informed interventions that remedy identified gaps and are consistent with professionally accepted practices. These training requirements must form a program of professional development shared with public and nonpublic school staff and accompany guidance issued by the State Superintendent on best practices in conducting positive behavioral health implementation plans.

Current Law: Physical restraint means the use of physical force, without the use of any device or material, to restrict the free movement of all or a portion of a student's body. Seclusion means the confinement of a student in a locked room, closet, box, or other space from which the student is physically prevented from leaving.

The State Superintendent must consult with representatives of institutions of higher education and the Professional Standards and Teacher Education Board with respect to training requirements for teachers and administrators to ensure that sufficient training is available regarding positive behavioral interventions and strategies, consistent with professionally accepted practices and standards for persons entering the field of education.

The Code of Maryland Regulations (COMAR) prohibits the use of physical restraint and seclusion by public agencies and nonpublic schools except in specified circumstances. Physical restraint and seclusion may be used only when (1) 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 to be inappropriate; (2) the student's behavioral intervention plan or IEP describes specific behaviors and circumstances in which physical restraint may be used; or (3) the parents of a nondisabled student have otherwise given written consent for the use of physical restraint while a behavior intervention plan is being developed.

Physical restraint and seclusion may be applied only by school personnel who are trained in their appropriate use. Regulations include specific guidelines about the form and duration of physical restraint and seclusion that may be used, and they require that each instance be documented and reported to parents. They also specify the specific follow-up interventions that public agencies and nonpublic schools must take after the use of physical restraint or seclusion for students with and without IEPs.

COMAR also requires that the door of a seclusion room must 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. School personnel must remain in close proximity at all times, actively observe a student in seclusion, provide a student in seclusion with an explanation of the behavior that resulted in removal and instructions on behavior required to return to the learning environment. Additionally, a seclusion event may not restrict a student's ability to communicate distress and may not exceed 30 minutes.

Each time a seclusion or restraint is used on a student, school personnel must document other less intrusive interventions that failed, the names and signatures of staff members implementing and monitoring in the case of seclusion, a description of the event including justification, the student's behavior, the name and signature of the administrator informed, and the length of time in seclusion/restraint. This documentation must be maintained in the student's educational record and available for inspection by the student's parent or legal guardian.

On or before December 1 each year, each public and nonpublic school must submit a report to MSDE on the number of physical restraint and seclusion incidents disaggregated by jurisdiction, disability, race, gender, age, and type of placement. Each public school must also report for the prior school year all professional development provided to designated school personnel relating to positive behavioral interventions, strategies, and supports and trauma-informed interventions. MSDE must provide guidance to public agencies and nonpublic schools regarding the requirements of the use of seclusions and rooms for seclusion and report to the General Assembly regarding findings and recommendations made by public and nonpublic schools.

State Expenditures: MSDE advises that two full-time regular staff positions are needed to implement the requirements of the bill. These staff members are needed to provide technical assistance and recommendations to all public agencies and nonpublic schools as they implement and respond to the reporting and training requirements. One staff member is needed to focus on fulfilling the technical data collection, analysis, verification, and reporting requirements of the bill. The other staff member is needed to develop and support guidance to public agencies and nonpublic schools related to best practices in conducting positive behavioral health intervention plans. Additionally, the second employee would be responsible for the creation and implementation of training requirements to implement

evidence-based positive behavior interventions, strategies, and supports and trauma-informed care for all school personnel. The Department of Legislative Services (DLS) notes that the bill expands MSDE’s responsibilities and reporting requirements significantly and concurs with the assessment that two full-time regular staff positions are needed to successfully implement the requirements of the bill.

Accordingly, general fund administrative expenditures increase by \$157,626 in fiscal 2022, which accounts for a 90-day start-up delay from the bill’s July 1, 2021 effective date. This estimate reflects the cost of hiring two education program specialists to manage the program. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | |
|-----------------------------------|------------------|
| Regular Positions | 2 |
| Salary and Fringe Benefits | \$146,463 |
| One-time Start-up Costs | 10,180 |
| Operating Expenses | <u>983</u> |
| Total FY 2022 Expenditures | \$157,626 |

Out-years reflect annualization, elimination of one-time costs, and ongoing operating costs.

Maryland School for the Deaf advises that it budgets \$4,000 annually to train staff in appropriate techniques for physical restraint and seclusion and, therefore, can meet the bill’s requirements with existing resources.

Local Expenditures: Local school systems may incur costs to collect and report data on restraint and seclusion incidents; however, these costs are mitigated to the extent the school system already keeps accurate records and can likely be handled with existing resources. Additionally, to the extent new training/professional learning requirements require systems to hire substitutes while staff are trained, pay consultation fees for experts or add skilled personnel to train staff, expenditures may greatly increase.

Prince George’s County Public Schools advise that annual expenditures increase more than \$300,000 annually to increase training and professional development for staff. However, DLS advises that until the State Superintendent’s requirements for professional development are established, the actual cost of increased training is unknown.

Additional Comment: Nonpublic schools may face costs related to the bill to the extent such schools must comply with new reporting and professional development requirements.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland State Department of Education; Maryland School for the Deaf; Maryland Department of Health; Baltimore City Public Schools; Baltimore County Public Schools; Anne Arundel County Public Schools; Prince George's County Public Schools; Frederick County Public Schools; Wicomico County Public Schools; Department of Legislative Services

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