



Technical Assistance Bulletin

19-02

July 2019



Division of Early Intervention and Special Education Services

Birth-4		Birth-5		Age 3-5		Age 3-21	X	Birth-21	
---------	--	---------	--	---------	--	----------	---	----------	--

Student Behavior Interventions: Physical Restraint and Seclusion Supplement on Students with Disabilities

This technical assistance bulletin is provided as a supplement to the document, *Student Behavior Interventions: Restraint and Seclusion*, Maryland State Department of Education, Division of Student, Academic Enrichment, and Educational Policy, which may be accessed via the Division’s [webpage](http://marylandpublicschools.org/about/Pages/DSFSS/index.aspx): (<http://marylandpublicschools.org/about/Pages/DSFSS/index.aspx>).

Physical restraint IS...	Physical restraint IS NOT...
<p>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</p>	<ul style="list-style-type: none"> • Briefly holding a student to calm or comfort the student; • A physical escort, which is the temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purposes of inducing a student who is acting out to walk to a safe location; • Moving a disruptive student who is unwilling to leave the area if other methods such as counseling have been unsuccessful; or • Intervening in a fight in accordance with Education Article §7-307, Annotated Code of Maryland.
Seclusion IS...	Seclusion IS NOT...
<p>The involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.</p>	<ul style="list-style-type: none"> • 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. • Exclusion, which 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.

[COMAR 13A.08.04.02]

Frequently Asked Questions

1. What interventions should be used prior to the use of physical restraint or seclusion?

School personnel are encouraged to use an integrated tiered system of supports that include an array of positive behavior interventions, strategies, and supports to increase or decrease targeted student behaviors. Less restrictive, nonphysical strategies must be unsuccessfully attempted (and fail) or be considered (and determined inappropriate) prior to the use of physical restraint or seclusion. If a student with a disability is manifesting challenging behaviors, the individualized education program (IEP) team should 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. Physical restraint or seclusion should be considered as a last resort to address imminent, serious physical harm.

[COMAR 13A.08.04.03]

2. When can physical restraint or seclusion be used?

Physical restraint or seclusion are prohibited in public agencies and nonpublic schools until there is an emergency situation and physical 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. While physical restraint or seclusion are allowed in limited circumstances, they are crisis-oriented responses that should not be used in lieu of less intrusive, nonphysical interventions. Under no circumstances should physical restraint or seclusion be used for discipline or staff convenience. Additionally, parental consent is required. Please see questions 5 and 6 for information on parental consent.

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

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

Once physical 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 as outlined in Question #2, physical restraint or seclusion may be included on a student's BIP and IEP to address the student's behavior in an emergency, provided that school personnel:

- i) review available data to identify any contraindications to the use of physical restraint or seclusion based on medical history or past trauma, including consultation with medical or mental health professional as appropriate;
- ii) identify the less intrusive, nonphysical interventions that will be used to respond to the student's behavior prior to the use of physical restraint or seclusion in an emergency situation; and
- iii) obtain 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)]

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

No. Physical 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 physical restraint or seclusion is necessary to protect a student or other person from **imminent, serious, physical harm** after less intrusive, nonphysical interventions have failed or been determined inappropriate.

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:

- i) A substantial risk of death;
- ii) Extreme physical pain;
- iii) Protracted and obvious disfigurement; or
- iv) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Physical restraint or seclusion may not be used except to protect a student or other person from imminent, serious, physical harm, and should only be used by trained personnel. Regardless of whether it is included in a student's BIP and IEP, physical restraint or seclusion may not be used as a planned behavioral intervention in response to behavior that does not pose imminent danger of serious, physical harm to self or others. It would also be inappropriate to use physical restraint or seclusion as a form of punishment or discipline in response to disrespect, noncompliance, insubordination, or out-of-seat behavior.

[34 C.F.R. § 300.530(h)(i)(3); 18 U.S.C. § 1365(h)(3); COMAR 13A.08.04.05]

5. When is parental consent required for physical restraint or seclusion?

The IEP team must obtain the written consent of the parent if the team proposes to include physical restraint or seclusion in the BIP and IEP to address the student's behavior. If the parent does not provide written consent, 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 physical 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 physical 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)]

6. What if an emergency situation arises but the parent refused physical restraint or seclusion?

Physical restraint or seclusion may be used if there is an emergency situation and physical 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 physical restraint or seclusion on a student's BIP and IEP. In any event, each time physical 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.

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

7. What 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 who has not been identified as a student with a disability, the student must immediately be referred to the school’s student services team or an IEP team. If restraint or seclusion is used for a student with a disability, and the BIP and IEP does 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, and implementing or revising a BIP.

[COMAR 13A.08.04.05C(1)-(2)]

8. When does a physical escort end and a physical restraint begin?

A physical escort is the temporary touching or holding of the hand, wrist, arm, shoulder, or back for purposes of inducing a student who is acting out to walk to a safe location. By definition, a physical escort is not a prolonged action and does not restrict the student’s ability to move freely. It is a limited attempt to redirect the student that still allows the student to move from one place to another.

A physical restraint, on the other hand, is a personal restriction that immobilizes or reduces the ability of a student to move the student’s body, including the torso, arms, legs, or head. Thus, once a student is held in place 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.

[COMAR 13A.08.04.02]

9. What must occur after restraint or seclusion is added to a student’s BIP and IEP?

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

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

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

Appendix: RESOURCES

Federal 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, 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 – 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>

Code of Maryland Regulations

COMAR 13A.08.04 Student Behavior Interventions (search at:
http://www.dsd.state.md.us/COMAR/subtitle_chapters/Titles.aspx)

COMAR 13A.08.04.05 General Requirements for the Use of Restraint or Seclusion (search at:
http://www.dsd.state.md.us/COMAR/subtitle_chapters/Titles.aspx)



Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201
MarylandPublicSchools.org

© 2019 Maryland State Department of Education, Division of Early Intervention and Special Education Services. Produced under the guidance of Marcella E. Franczkowski, Assistant State Superintendent, Division of Early Intervention and Special Education Services. Please include reference to the Maryland State Department of Education, Division of Early Intervention and Special Education Services on any replication of this information. To request permission for any use that is not “fair use” as that term is understood in copyright law, contact: Maryland State Department of Education, Division of Early Intervention and Special Education Services, 200 West Baltimore Street, Baltimore, Maryland 21201. Phone 410-767-0249

This document was developed using grant funding provided to the Maryland State Department of Education from the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS)/Office of Special Education Programs (OSEP), under the Individuals with Disabilities Education Act (IDEA). The Maryland State Department of Education does not discriminate on the basis of race, color, sex, age, national origin, religion, or disability in matters affecting employment or in providing access to programs. For inquiries related to departmental policy, please contact the Equity Assurance and Compliance Branch: Phone 410-767-0433, TTY 410-767-0426, Fax 410-767-0431.

Karen B. Salmon, Ph.D.
State Superintendent of Schools

Justin M. Hartings, Ph.D.
President
State Board of Education

Carol A. Williamson, Ed.D.
Deputy State Superintendent for Teaching and Learning

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Early Intervention and Special Education Services

Larry Hogan
Governor