



Fact Sheet

Division of Special Education/Early Intervention Services

The Use of Restraint and Seclusion

Overview

To stress the importance and seriousness of issues pertaining to restraint and seclusion, the U.S. Department of Education (USDE) issued a comprehensive resource document entitled *Restraint and Seclusion: Resource Document*. This resource document is available at the following website: www.ed.gov/policy/restraintseclusion. The Maryland State Department of Education, Division of Special Education/Early Intervention Services revised the existing Technical Assistance Bulletin (TAB), *Use of Exclusion, Restraint and Seclusion*, in September 2012 to align with, and reference, the USDE resource document. The TAB is available at <http://www.marylandpublicschools.org/NR/rdonlyres/5F4F5041-02EE-4F3A-B495-5E4B3C850D3E/33665/91812RevTAB18.pdf>.

The USDE resource document presents fifteen principles for State, local school system, school staff, parents, and other stakeholders to consider when developing policies and procedures on the use of restraint and seclusion. The Maryland State Department of Education, Division of Special Education/Early Intervention Services supports the USDE principles. The first of the USDE principles on the use of restraint and seclusion is, "Every effort should be made to prevent the need for the use of restraint and for the use of seclusion." The USDE principles also state that, "Physical restraint or seclusion should not be used except in situations where the child's behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should discontinued as soon as imminent danger of serious physical harm to self or others has dissipated" [U.S. Department of Education, *Restraint and Seclusion: Resource Document*, p. 12-13; Washington, D.C., 2012].

Positive Behavioral Interventions and Supports

Positive behavioral supports and intervention strategies represent a comprehensive system of behavior management that uses multiple approaches, including establishing school-wide systems, implementing classroom management techniques, altering environments, and overtly recognizing appropriate behavior positively, rather than simply using one intervention in an attempt to eliminate a behavior. The purpose of positive interventions is to teach appropriate behaviors to the student and to replace the inappropriate behaviors. Intervening and altering the known environment, activities, and our responses to the behavior by modeling and positively reinforcing the desired appropriate behavior within the setting is more efficient and effective for both the student and the staff. The Individuals with Disabilities Education Act (IDEA) requires a student's Individualized Education Program (IEP) team to consider positive behavior interventions, strategies, and supports to address the behavior when that behavior impedes the student's learning or the learning of others [34 CFR §300.324(a)(2)(i); COMAR 13A.05.01.08A(4)]. The IDEA also specifically requires the involvement of the student's general education teacher in the development, review, and revision of the student's IEP to assist in determining appropriate positive interventions and strategies for the student [20 U.S.C. § 1414(d)(3)(C); 34 CFR §300.324(a)(3); COMAR 13A.05.01.08A(9)].

Physical Restraint and Seclusion

In Maryland schools, restraint, and seclusion may only be used after less restrictive or alternative approaches have been considered and attempted or determined not to be appropriate. Physical restraint and seclusion may be used:

- In an emergency situation in order to protect the student or others from "imminent, serious, physical harm" after other less intrusive, non-physical interventions have failed or been determined inappropriate;

- When a student's behavioral intervention plan or IEP describes the specific behaviors and circumstances in which physical restraint or seclusion may be used; or
- The parents of a non-disabled student have otherwise provided written consent to the use of physical restraints or seclusion while a behavior intervention plan is being developed [COMAR 13A.08.04.05A(1)(a); 13A.08.04.05B(1)].

Imminent Serious Physical Harm

Imminent serious physical harm has the same meaning as serious bodily injury in 18 U.S. C. 1365(h)(3) and 34 CFR §300.530(i)(3). Serious bodily harm means bodily injury which involves:

- a. a substantial risk of death;
- b. extreme physical pain;
- c. protracted and obvious disfigurement; or
- d. protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Frequent Use of Restraint and/or Seclusion

Frequent emergencies raise concerns about the efficacy of the student's behavioral intervention plan. Repeated challenging behaviors that lead to an emergency situation can be anticipated and should be addressed through the "array of positive behavior interventions, strategies, and supports" required by the regulations. Any determination that positive behavior interventions, strategies, and supports cannot address the identified behavior should be based on data. Likewise, any determination that restraint or seclusion is necessary should be based on data to support the efficacy of restraint or seclusion in addressing that behavior in the school setting.

In addition, the USDE states, "The use of restraint or seclusion, particularly when there is repeated use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual, should trigger a review and, if appropriate, revision of strategies currently in place to address dangerous behavior (defined as behavior that poses imminent danger of serious physical harm to self or others), if positive behavioral strategies are not in place, staff should consider developing them" [U.S. Department of Education, *Restraint and Seclusion: Resource Document*, p. 17, Washington, D.C., 2012].

A student's IEP team must also consider existing health, physical, psychological, and psycho-social information, information provided by the parents, observations by teachers and related service providers, and the student's current placement. School personnel are required to receive training in current professionally accepted practices and standards regarding alternatives to restraint and seclusion [COMAR 13A.08.04.06C(3)(d)]. Staff must be made aware that certain restraint and/or seclusion techniques are more restrictive than others. Personnel are to use the least restrictive technique necessary to end the threat of imminent danger of serious physical harm. A student's ability to communicate (including children who use only sign language or other forms of manual communication or assistive technology) also should not be restricted unless less restrictive techniques would not prevent imminent danger of serious physical harm to the student or others [U.S. Department of Education, *Restraint and Seclusion: Resource Document*, p. 16-17, Washington, D.C., 2012].

Other Considerations

If a student has not been identified as a student with disabilities and restraint or seclusion is used, the student must immediately be referred to the school's pupil services team or to the student's IEP team [COMAR 13A.08.04.05C]. School personnel can then assess whether the student's behavior appears to be an unusual, isolated event or an ongoing interference that needs to be assessed. If restraint or seclusion is used for a student who already is identified as being 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 must meet within 10 business days of the incident to consider the need for a functional behavioral assessment, the development of appropriate behavior interventions, and the implementation of a behavioral intervention plan [COMAR 13A.08.04.05C(2)]. If a student's IEP or behavior intervention plan does include the use of restraint or seclusion, the document shall specify how often the IEP team will meet to review or revise the document, as appropriate [COMAR 13A.08.04.05C(3)].

When the 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, the local school system or nonpublic school must provide the student's parent with prior written notice in accordance with federal and State law [COMAR 13A.08.04.05C(5)]. The parent may file for mediation or a due process complaint if he or she disagrees with the IEP team's proposals or refusals [COMAR 13A.08.04.05C(6)].

Resource Materials

Maryland State Department of Education, Division of Special Education/Early Intervention Services, *Discipline of Students with Disabilities*

http://www.marylandpublicschools.org/MSDE/divisions/earlyinterv/Special_Ed_Info.html (September 2009)

Technical Assistance Bulletin #18 *Use of Exclusion, Restraint and Seclusion*

<http://www.marylandpublicschools.org/NR/rdonlyres/5F4F5041-02EE-4F3A-B495-5E4B3C850D3E/33665/91812RevTAB18.pdf> (Revised September 2012)

USDE *Restraint and Seclusion: Resource Document* www.ed.gov/policy/restraintseclusion (May 2012)