

## PROHIBITION ON SECLUSION AND RESTRAINT IN SCHOOLS

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

Analysis available at  
<http://www.legislature.mi.gov>

**House Bills 5409 & 5410 as introduced**  
**Sponsor: Rep. Frank Liberati**

**House Bill 5413 as introduced**  
**Sponsor: Rep. Hank Vaupel**

**House Bills 5411 & 5417 as introduced**  
**Sponsor: Rep. Christine Greig**

**House Bills 5415 & 5418 as introduced**  
**Sponsor: Rep. Jim Tedder**

**House Bills 5412 & 5414 as introduced**  
**Sponsor: Rep. Amanda Price**

**House Bill 5416 as introduced**  
**Sponsor: Rep. Kurt Heise**

**Committee: Education**  
**Complete to 4-13-16**

### SUMMARY:

House Bills 5409 to 5418 would add Sections 1307-1307i to the Revised School Code, establishing a uniform policy for seclusion and restraint of students in schools.

House Bill 5409 would describe the need for these policies. House Bill 5410 would require the establishment of state and local policies, with House Bills 5411 to 5416 outlining specific prohibitions, emergency provisions, reporting requirements, creation and implementation of an emergency intervention plan, data collection requirements, and training required for school personnel. House Bill 5417 would define key terms, and House Bill 5418 would extend the requirements of creating a plan in accordance with the state policy and providing the requisite training to school personnel to nonpublic schools. These bills would take effect 90 days after they are enacted.

The provisions added by these bills would not limit any right or remedy of an individual under state or federal law.

#### **House Bill 5409: Prohibition on seclusion and restraint** (proposed MCL 380.1307)

The bill would outline findings that support a prohibition on seclusion and restraint, including the dignity of all students, and the positive effects of an increase in instructional time brought about by positive behavior support rather than seclusion or restraint. The bill would allow seclusion and physical restraint only in case of emergency, and would require diligent assessment, monitoring, documentation, and reporting by trained personnel in those rare cases.

#### **House Bill 5410: State and local policies required** (proposed MCL 380.1307a)

The bill would require the Department of Education to develop a *state policy* establishing a schoolwide positive behavioral intervention and support plan that includes all of the elements under Sections 1307c to 1307g, no later than December 1, 2016.

Also, the bill would require the board of a school district or intermediate school district (ISD), or the board of directors of a public school academy (charter school) to adopt and implement a *local policy* that is consistent with the state policy, no later than the beginning of the 2017-2018 school year.

**House Bill 5411: Specific prohibited practices** (proposed MCL 380.1307b)

This bill would specify the practices that the state policy created under proposed Section 1307a (House Bill 5410) must prohibit for school personnel in Michigan public schools. These practices, listed below, are prohibited in all circumstances, including emergency situations:

- Corporal punishment (defined in Section 1312 as the deliberate infliction of physical pain by hitting, paddling, spanking, slapping, or any other physical force used as a means of discipline).
- The deprivation of basic needs.
- Child abuse.
- Seclusion, other than emergency seclusion.
- The intentional application of any noxious substance or stimulus that results in physical pain or extreme discomfort, whether the substance or stimulus is generally acknowledged or is specific to the pupil.
- Restraint of a pupil, including mechanical; chemical; any restraint that negatively impacts breathing; prone restraint; physical restraint, other than emergency physical restraint; or any other type of restraint.

**House Bill 5412: Provisions for emergencies** (proposed MCL 380.1307c)

This bill would require that the state policy created under proposed Section 1307a (House Bill 5410) would include specified provisions on uses of *emergency seclusion and emergency physical restraint*. These provisions would include the following:

- Emergency seclusion or restraint may only be used under emergency situations, if essential, and not in place of a less restrictive intervention.
- Emergency seclusion or restraint must be safe, appropriate, and proportionate to the severity of the behavior, the pupil's chronological and developmental age, and other applicable mitigating factors.
- The time limits for emergency seclusion or physical restraint, after which time additional support and documentation of the situation are required.
- Substitute teachers must be informed of all local emergency procedures, including those concerning emergency seclusion and restraint.
- While using emergency seclusion or restraint, school personnel must involve the key identified personnel, continually observe the pupil and seek medical attention if there is a concern, and document observations.

**House Bill 5413: Documentation and reporting** (proposed MCL 380.1307d)

This bill would require that the state policy created under Section 1307a (House Bill 5410) include documentation and reporting requirements during and after any use of seclusion or restraint.

At the time seclusion or restraint is utilized, the use must be reported to the school building administration immediately, to the pupil's parent or guardian as soon as possible, and documented in a written report, which will be provided to the parent or guardian within 24 hours.

After any use of seclusion or restraint, school personnel will debrief with parents and pupils (as appropriate) on the behavior that precipitated the intervention, the possibility of a repeat, and what follow up, if any, is necessary. Further specified actions are encouraged if the behavior is part of a pattern.

**House Bill 5414: Emergency intervention plan** (proposed 380.1307e)

The bill would require each ISD to develop a districtwide emergency intervention plan that protects the health, safety, and dignity of the pupils. The plan must provide a clear and detailed description of the procedures to be followed and the potential actions taken in an emergency situation, including, if applicable, the potential use of emergency seclusion and physical restraint.

The ISD must provide written or electronic notification to parents and guardians about the plan, including instructions on accessing it, and asking questions and expressing concern. Additionally, it must be posted on the ISD's public website, if the ISD has a website.

In response to any concerns about the humaneness or social acceptability of an element of the emergency intervention plan, the ISD must convene a human rights committee with at least three key identified personnel and three members of the ISD's parent advisory committee. The ISD's plan will specify that the committee will periodically review the plan, ensure that the personnel are trained in the techniques described in the plan, and ensure that necessary staffing is maintained at all times.

**House Bill 5415: Data collection** (proposed 380.1307f)

This bill would describe the data to be collected and analyzed according to the state policy developed under Section 1307a. Each ISD would be required to develop a system of data collection on the use of seclusion and restraint, with the data to be analyzed by the applicable school, school district, and ISD to determine the efficacy of the school's system of behavioral support.

Additionally, ISDs should analyze the seclusion and restraint data in the context of suspension, expulsion, and dropout data, as well as the purposes of continuous improvement of training and technical assistance toward the elimination of seclusion and restraint and the reduction or elimination of emergency seclusion and physical restraint.

The data should be analyzed on a schedule determined by MDE, reported electronically to MDE, and posted on the MDE website in redacted, aggregate form, on a quarterly basis. This data must also include a list of key identified personnel and their levels of education, training, and knowledge.

**House Bill 5416: Training required for school personnel** (proposed MCL 380.1307g)

The bill would require all school districts, ISDs, and public schools to institute a comprehensive training framework for school personnel, including at least preservice training for all teachers, awareness training for substitute teachers, and comprehensive training for key identified personnel. The training for key identified personnel must take place before those personnel can use emergency seclusion or emergency physical restraint with pupils.

***Key identified personnel***, as defined in this bill and House Bill 5417, will be (1) identified by the school district in a number sufficient to ensure that trained personnel will be available for an emergency situation, and (2) have training in all of the following:

- Proactive practices and strategies that ensure the dignity of pupils;
- De-escalation techniques;
- Techniques to identify pupil behaviors that may trigger emergency situations;
- Related safety considerations, including information regarding the increased risk of injury to pupils and school personnel when emergency seclusion or emergency physical restraint is used;
- Instruction in the use of emergency seclusion and emergency physical restraint;
- Identification of events and environmental factors that may trigger emergency situations;
- Instruction on the MDE policy on the use of emergency seclusion and emergency physical restraint;
- Description and identification of dangerous behaviors;
- Methods for evaluating the risk of harm to determine whether the use of emergency seclusion or emergency physical restraint is warranted;
- Types of seclusion;
- Types of restraint;
- The risk of using emergency seclusion and emergency physical restraint in consideration of a pupil's known and unknown medical or psychological limitations;
- The effects of emergency seclusion and emergency physical restraint on all pupils;
- How to monitor the physical signs of distress; and
- How to obtain medical assistance.

Additionally, the bill recommends but does not require that the key identified personnel be trained in conflict resolution, mediation, social skills training, and positive behavioral intervention and support strategies.

**House Bill 5417: Key definitions** (proposed MCL 380.1307h)

This bill defines 23 key terms used throughout the ten bill package. These terms include:

***Emergency physical restraint***: a last resort emergency safety intervention involving physical restraint that is necessitated by an emergency situation and that provides an opportunity for the pupil to regain self-control. Emergency physical restraint includes necessary actions taken to break up a fight or take a weapon away from a pupil.

***Emergency seclusion:*** a last resort emergency safety intervention involving seclusion that is necessitated by an emergency situation and that provides an opportunity for the pupil to regain self-control. To qualify as emergency seclusion, there must be continuous adult observation of the pupil in seclusion, and the room or area used for confinement must not be locked, must not prevent the pupil from exiting the area if school personnel become incapacitated or leave that area, and must provide for adequate space, lighting, ventilation, viewing, and the safety of the pupil. Emergency seclusion does not include confinement that occurs in a sensory deprivation room, or any other room that is outside the usual teaching environment; or the confinement of preschool children or pupils who are severely self-injurious or suicidal.

Emergency physical restraint and emergency seclusion do not include physical restraint or confinement used for the convenience of staff, as a substitute for an educational program, as a form of discipline or punishment, as a substitute for less restrictive alternatives, as a substitute for adequate staffing, or as a substitute for staff training in positive behavioral supports and crisis prevention and intervention. Likewise, emergency physical restraint and emergency seclusion do not include the specifically prohibited practices outlined in proposed MCL 380.1307b (House Bill 5411).

***Restraint:*** an action that prevents or significantly restricts a pupil's movements. Restraint does not include the brief holding by an adult in order to calm or comfort, the minimum contact necessary to physically escort a pupil from one area to another or assist a pupil in completing a task or response if the pupil does not resist or resistance is minimal in intensity or duration, or the holding of a pupil for a brief time in order to prevent an impulsive behavior that threatens the pupil's immediate safety, such as running in front of a car.

***Seclusion:*** the confinement of a pupil in a room or other space from which the pupil is prevented from leaving. Seclusion does not include an exclusionary time-out or emergency exclusion.

**House Bill 5418: Provisions for nonpublic schools** (proposed MCL 380.1307i)

This bill would extend the prohibition on corporal punishment and seclusion to nonpublic schools. Specifically, not later than the beginning of the 2017-2018 school year, the governing body of a nonpublic school must adopt and implement a policy that is consistent with the state policy establishing a schoolwide positive behavior intervention and support plan described in proposed MCL 380.1307a (House Bill 5410).

In order to provide the school personnel training required under the state policy and described in proposed MCL 380.1307g (House Bill 5416), the nonpublic school may request training from the school district or ISD in which it is located, which must provide that training upon request.

**House Bills 5409 to 5418**

A tie-bar means that two or more bills are linked together, and neither can take effect unless both are enacted. House Bills 5409, 5411-5416, and 5418 are tie-barred to House Bills

5410 and 5417. House Bill 5410 is tie-barred to House Bills 5409 and 5411-5416. Finally, House Bill 5417 is tie-barred to House Bill 5410.

Some of these bills are identical to a bill package under consideration in the Senate. House Bill 5409 is identical to Senate Bill 835, HB 5412 to SB 836, HB 5417 to SB 837, and HB 5418 to SB 838.

## **BACKGROUND INFORMATION:**

This bill package is largely identical to guidance from the Michigan Department of Education. That guidance was compiled from recommendations from a group made up of parents, advocates, educators, policy makers, and service providers, convened by the Michigan Superintendent of Public Instruction between 2004 and 2006. The group considered statutes, rules, and policies from other states, behavioral guidelines from Wayne RESA and the Traverse Bay Area ISD, as well as other sources.

The main substantive difference is that the MDE standards call for an Emergency Intervention Plan that is student-specific, if a pattern of behavior that requires the use of emergency seclusion emerges or is anticipated, with the plan created in partnership with the student's parent and medical personnel (with parental consent), and carried out, if necessary, with parental consent. The Emergency Intervention Plan described in House Bill 5414 would be created by ISDs and implemented district-wide. It would be developed in partnership with parents and guardians, who would also receive notice and information on how to access the ISD plan.

Please refer to the following for the MDE report:

*Supporting Student Behavior: Standards for Emergency Use of Seclusion and Restraint:*  
[https://www.michigan.gov/documents/mde/Seclusion\\_and\\_Restraint\\_Standards\\_180715\\_7.pdf](https://www.michigan.gov/documents/mde/Seclusion_and_Restraint_Standards_180715_7.pdf)

## **FISCAL IMPACT:**

The bills would increase costs, by an indeterminate amount, for the state, as well as on intermediate school districts (ISDs), school districts, and public school academies (PSAs).

The Department of Education (MDE) could incur increased administrative costs to develop and carryout a state policy establishing a schoolwide positive behavioral intervention and support plan. The MDE could also incur administrative costs in having to report data on its website on the use of seclusion and restraint by district on a quarterly basis. However, the department is likely to absorb these costs through the redirection of staff time rather than hiring additional staff.

The bills would also increase costs by requiring ISDs, school districts, and PSAs to develop and implement local policies that meet the state policy guidelines. Specifically, the bills would create costs by requiring the following:

- Emergency Use of Seclusion and Restraint
  - Additional staff time for ISDs to create and maintain an emergency intervention plan detailing the procedures to be followed when emergency seclusion or emergency physical restraint is necessary.
  - Additional staff time if a human rights committee is deemed necessary to review the emergency intervention plan.
  - Awareness training for all teachers and preservice training for all substitute teachers.
  - Emergency response training for all key identified personnel in the appropriate use of emergency seclusion and restraint. (Some districts use a Crisis Prevention Institute (CPI) training program that costs approximately \$2,900 per person). The bills do not specify how many school personnel would need this level of training.
  - Additional staff time for continual observation of a pupil in emergency seclusion or restraint.
  - Additional staff time, and potentially the use of a trained behaviorist, to conduct a functional behavioral assessment and to develop a positive behavioral intervention support plan if a pattern of behavior emerges.
  
- Documentation and Reporting of Seclusion and Restraint
  - Additional staff time to report each case of emergency seclusion or restraint, which must be documented in writing, reported to the school building administration, and a written report provided to the parent within 24 hours.
  - Additional staff time to debrief and consult with parents after each use of emergency seclusion or restraint.
  - Additional staff time to document cases of emergency seclusion and restraint that exceed time periods allowed under state policy.
  
- Data Collection and Analysis
  - Additional staff time for ISD development of a system of data collection regarding the use of emergency seclusion and restraint.
  - Additional staff time for ISD analysis of the emergency seclusion and restraint data with respect to suspension, expulsion, and dropout data and with the purpose of improving training and technical assistance to reduce or eliminate the use of emergency seclusion and restraint.
  - Additional staff time dedicated to reviewing efficacy of seclusion and restraint data in relation to a school's system of behavioral support.

Legislative Analyst: Jennifer McInerney  
 Fiscal Analyst: Bethany Wicksall  
 Samuel Christensen

---

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.