

Legislative Analysis



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 (H-1) & 5410 (H-1)
Sponsor: Rep. Frank Liberati

House Bill 5413 (H-1)
Sponsor: Rep. Hank Vaupel

House Bills 5411 & 5417 (H-1)
Sponsor: Rep. Christine Greig

House Bills 5415 (H-1) & 5418 (H-1)
Sponsor: Rep. Jim Tedder

House Bills 5412 (H-1) & 5414 (H-1)
Sponsor: Rep. Amanda Price

House Bill 5416 (H-1)
Sponsor: Rep. Kurt Heise

Committee: Education
Complete to 9-14-16

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 intent behind these policy changes. 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 state that the legislature's intent in creating this bill package is to promote the dignity of all pupils, reduce the occurrence of challenging behaviors, eliminate the use of seclusion and restraint, and increase meaningful instructional time for all pupils. 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 (MDE) to develop a *state policy* regarding the use of seclusion and restraint in public schools that includes all of the

elements under Sections 1307c to 1307h, along with guidelines as the MDE considers appropriate, 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.

A person who fails to comply with the state policy on seclusion and restraint is considered to have failed to comply with and to have violated this act, and, presumably, would be subject to the same penalties as for any other violation of the Revised School Code: that person is guilty of a misdemeanor punishable by a fine not more than \$500 or imprisonment for not more than three months, or both (MCL 380.1804). Additionally, a person who fails to comply may be dismissed from employment by the school (MCL 380.1806).

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; and
- 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 be used under emergency situations, only if essential to providing for the safety of the pupil or another individual, and not in place of appropriate less restrictive interventions.
- 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.

- School personnel must call key identified personnel immediately or, if there is a safety concern, as soon as possible without endangering the safety of the student or others.
- Substitute teachers must be informed of and must understand procedures concerning emergency seclusion and restraint. This requirement may be met by online training and an online acknowledgment of understanding completed by the teacher.
- Emergency seclusion or physical restraint should not be used any longer than necessary (for emergency seclusion, generally no longer than 15 minutes for an elementary school student or 20 minutes for a middle or high school student; for emergency physical restraint, generally no longer than 10 minutes), after which time additional support and documentation of the situation are required.
- While using emergency seclusion or emergency physical restraint, school personnel must involve the key identified personnel, continually observe the pupil, seek medical attention if there is a concern, and document observations.
- To the extent practicable, the emergency physical restraint must not interfere with the pupil's ability to communicate, and school personnel who can communicate with the pupil must be present.

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 documented in writing and reported in writing and orally to the school building administration and the pupil's parent or guardian immediately, and documented in a written report, which will be provided to the parent or guardian within the earlier of one school day or seven calendar days.

After any use of seclusion or restraint, school personnel must make reasonable efforts to debrief with parent or guardian and pupil (as appropriate), according to MDE guidelines and documented on MDE forms. Anything the pupil says at this debriefing and consultation period may not be used against the pupil in a disciplinary, civil, or criminal proceeding. After the debriefing and consultation period, anything the student said may only be used against the student in a proceeding if school personnel first notify the parent or guardian and student that the period has concluded and statements are no longer protected. Further specified actions are encouraged if the behavior is part of a pattern.

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

Under this bill, if a pupil displays a pattern of behavior indicative of a future emergency situation, school personnel should develop an emergency intervention plan that protects the health, safety, and dignity of the student. The plan should be developed in partnership with the pupil's parents by a team that includes a teacher, one individual knowledgeable about the legal permissibility of emergency seclusion and restraint and one knowledgeable about positive behavior intervention and support in place of seclusion and restraint.

The plan should describe in detail the emergency intervention procedures and any legal limits on emergency seclusion and emergency physical restraint. In developing the plan, the team should, with parental consent, inquire about any medical or health contraindications for emergency seclusion or restraint.

In addition, the team should provide the parents with all of the following, in writing and orally:

- A detailed explanation of the positive behavioral intervention and support strategies that will be utilized to reduce the risk of the pupil's behavior creating an emergency situation.
- An explanation of what constitutes an emergency situation as defined in Section 1307h (House Bill 5417), including examples of what would and would not qualify.
- A detailed explanation of the procedures to be followed in an emergency situation, including possible use of emergency seclusion and emergency physical restraint.
- A detailed explanation of the legal limitations on emergency seclusion and emergency physical restraint, including examples of permissible and prohibited use.
- A description of possible discomforts or risks.
- Answers to any questions.

A pupil who is the subject of an emergency intervention plan should be told the circumstances under which emergency seclusion or restraint could be used.

Those practices must only be used in response to an ongoing emergency situation, and not for the convenience of school personnel, as punishment, or as a substitute for an educational program.

House Bill 5415: Data collection (proposed 380.1307f)

This bill describes the data to be collected and analyzed according to the state policy developed under Section 1307a. School districts, charter schools, or ISDs must collect and report data on the use of seclusion and restraint, using existing data collection and reporting systems whenever possible. Incidents of use must be broken down by race, age, grade, gender disability status, medical condition, names of the school personnel involved, and the name of the school or program in which it was used, at a minimum. The data should be analyzed by the applicable school, school district, charter school, and ISD to determine the efficacy of the school's system of behavioral support.

Additionally, schools, school districts, and 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.

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.

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 that includes awareness training for all school personnel who have regular contact with pupils 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 generally 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 seclusion or 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 local policy on the use of seclusion and 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 seclusion or restraint in consideration of a pupil's known and unknown physical or mental health conditions or psychological limitations;
- The effects of seclusion and restraint on all pupils;
- How to monitor for and identify the physical signs of distress and the implications for pupils generally and pupils with particular physical or mental health conditions or psychological limitations;
- How to obtain appropriate medical assistance; and
- Cardiopulmonary resuscitation and first aid.

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 ongoing emergency situation and that provides an opportunity for the pupil to regain self-control while maintaining the safety of the pupil

and others. (See below for description of what "emergency physical restraint" does not include)

Emergency seclusion: a last resort emergency safety intervention involving seclusion that is necessitated by an ongoing emergency situation and that provides an opportunity for the pupil to regain self-control while maintaining the safety of the pupil and others. To qualify as emergency seclusion, there must be continuous observation by school personnel of the pupil in seclusion, and the room or area used for confinement must not be freestanding structure; must comply with state and local fire and building codes; must commonly be used by the general public population as a work space, learning space, study space, dining space, or other educational or social activity space, or as a voluntary decompressing space; must have physical dimensions that are equivalent or greater than the average physical dimensions of administrative offices within the school building; 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 living space, lighting, ventilation, viewing, and the safety of the pupil and others. Emergency seclusion does not include 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 school personnel, 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 school personnel training in positive behavioral intervention and support. They also do not include physical restraint or seclusion when contraindicated based on a pupil's disability, health care needs, or medical or psychiatric condition, as documented in a record or records made available to the school. 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 of a pupil 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. Restraint does not include the administration of medication prescribed by and administered in accordance with the directions of a physician, an adaptive or protective device recommended by a physician or therapist when it is used as recommended, or safety equipment used by the general population as intended, such as a seat belt or safety harness on school transportation. Restraint does not include necessary actions taken to break up a fight, to stop an ongoing assault or an ongoing assault attempt, or to take a weapon from a pupil. Restraint does not include actions that are an integral part of a sporting event, such as a referee pulling football players off of a pile or a similar action.

Seclusion: the confinement of a pupil in a room or other space from which the pupil is prevented from leaving, either physically or by threat of physical harm or punishment or

emotional harm or punishment. Seclusion does not include the general confinement of pupils if that confinement is an integral part of an emergency lockdown drill or another emergency security procedure that is necessary to protect the safety of the pupils.

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 developed under MCL 380.1307a (House Bill 5410) regarding the use of seclusion and restraint in the public schools.

As with failure to comply with the public schools' policy, a person who fails to comply with the school policy on seclusion and restraint would be considered to have failed to comply with and to have violated this act, and would be subject to the same penalties as for any other violation of the Revised School Code: that person is guilty of a misdemeanor punishable by a fine not more than \$500 or imprisonment for not more than three months, or both. Additionally, a person who fails to comply may be dismissed from employment by the school.

In order to provide the school personnel training required under the state policy and described in 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. In their original form, 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.

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

FISCAL IMPACT:

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

The Department of Education (MDE) could incur increased administrative costs to develop and carry out a state policy establishing a schoolwide positive behavioral intervention and support plan, and to create emergency seclusion and emergency physical restraint debriefing and consultation guidelines and forms for local schools to use. 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 districts to create individualized emergency intervention plans detailing the procedures to be followed for students that pose a substantial risk of creating an emergency situation that could result in the use of emergency seclusion or emergency physical restraint.
 - Awareness training for all school personnel who have regular contact with pupils.
 - Comprehensive training in the appropriate use of emergency seclusion and restraint for all key personnel identified by the district 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 emergency physical restraint.
 - Additional staff time to conduct a functional behavioral assessment, to develop a positive behavioral intervention support plan if a pattern of behavior emerges, and/or to develop an assessment and planning process.
- **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 in writing or orally to the school building administration and the pupil's parent or guardian immediately, and provided in a written report to the parent or guardian within either one school day or seven calendar days, whichever is earliest.

- Additional staff time to debrief and consult with parents or guardians 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 an ISD, school district, or PSA to collect and report data regarding the use of emergency seclusion and restraint.
 - Additional staff time for an ISD, school district, or PSA to analyze 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 for an ISD, school district, or PSA to determine the 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.