



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 5409 (Substitute H-1 as passed by the House)
House Bill 5410 (Substitute H-1 as passed by the House)
House Bill 5411 (as passed by the House)
House Bill 5412 (Substitute H-1 as passed by the House)
House Bill 5413 (Substitute H-3 as passed by the House)
House Bill 5414 (Substitute H-1 as passed by the House)
House Bill 5415 (Substitute H-1 as passed by the House)
House Bill 5416 (Substitute H-1 as passed by the House)
House Bill 5417 (Substitute H-5 as passed by the House)
Sponsor: Representative Frank Liberati (H.B. 5409 & 5410)
Representative Christine Greig (H.B. 5411 & 5417)
Representative Amanda Price (H.B. 5412 & 5414)
Representative Hank Vaupel (H.B. 5413)
Representative Jim Tedder (H.B. 5415)
Representative Kurt Heise (H.B. 5416)

House Committee: Education
Senate Committee: Education

Date Completed: 12-13-16

CONTENT

The bills would add Sections 1307 to 1307h to the Revised School Code to require the Department of Education to develop a uniform State policy regarding the use of seclusion and restraint in public schools; and require each school district and public school academy to adopt and implement a local policy consistent with the State policy.

House Bill 5409 (H-1) would express legislative intent regarding the objectives of the State policy.

House Bill 5410 (H-1) would require the Department to develop the State policy and would require the board of a school district, intermediate school district, or public school academy to adopt and implement a local policy that was consistent with the State policy.

House Bill 5411 would require the State policy to specify that practices listed in the bill, including corporeal punishment, seclusion (other than emergency seclusion), mechanical restraint, and chemical restraint, would be prohibited for school personnel under all circumstances.

House Bills 5412 (H-1), 5413 (H-3), 5414 (H-1), 5415 (H-1), and 5416 (H-1) would require the State policy to include specific provisions concerning the following:

- Use of emergency seclusion and emergency physical restraint.
- Documentation and reporting.
- Development and implementation of an emergency intervention plan.
- Data collection.

House Bill 5417 (H-5) would define terms used in the other bills.

Each of the bills would take effect 90 days after enactment.

The following is detailed description of each of the bills except House Bill 5317 (H-5). The definitions proposed by that bill are included in the descriptions of the other bills.

House Bill 5409 (H-1)

The bill would state a legislative intent that Sections 1307 through 1307h of the Revised School Code provide for a uniform policy regarding the use of seclusion and restraint in the public schools that would accomplish the following objectives:

- "Promotes the care, safety, welfare, and security of the school community and the dignity of each pupil."
- "Encourages the use of proactive, effective, evidence- and research-based strategies and best practices to reduce the occurrence of challenging behaviors, eliminate the use of seclusion and restraint, and increase meaningful instruction time for all pupils."
- "Ensures that seclusion and physical restraint are used only as a last resort in an emergency situation and are subject to diligent assessment, monitoring, documentation, and reporting by trained personnel."
- "Clearly defines the terms 'seclusion', 'restraint', 'emergency seclusion', and 'emergency physical restraint' and clearly states the procedures for the use of emergency seclusion and emergency physical restraint."

The bill also provides that Sections 1307 to 1307h would not limit any right or remedy of an individual under State or Federal law.

House Bill 5417 (H-5) would define "seclusion" as the confinement of a pupil in a room or other space from which the pupil is physically prevented from leaving. The term would not include the general confinement of pupils if that confinement is an integral part of an emergency lockdown drill required under the Fire Prevention Code, or of another emergency security procedure that is necessary to protect the safety of pupils.

The bill would define "restraint" as an action that prevents or significantly restricts a pupil's movement. The term would 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, the minimum contact necessary to assist a pupil in completing a task or respond 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 his or her immediate safety. "Restraint" also would not include the following:

- The administration of medication prescribed by and administered according to the directions of a physician.
- An adaptive or protective device recommended by a physician or therapist when it is used as recommended.
- Safety equipment used by the general pupil population as intended.
- Necessary actions taken to break up a fight, to stop a physical assault, or to take a weapon from a pupil.
- Actions that are an integral part of a sporting event.

"Emergency seclusion" and "emergency physical restraint" would mean a last resort emergency safety intervention involving seclusion or physical restraint, as applicable, 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. "Emergency seclusion" and "emergency physical restraint" would not include the following:

- Seclusion or physical restraint that is 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.
- A practice prohibited under Section 1307b (the section proposed by House Bill 5411).
- Seclusion or physical restraint 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.

"Emergency seclusion" also would not include confinement of preschool children or of pupils who are severely self-injurious or suicidal.

To qualify as emergency seclusion, there would have to be continuous observation by school personnel of the pupil in seclusion, and the room or area used for confinement would have to comply with State and local fire and building codes, could not be locked, could not prevent the pupil from exiting the area if school personnel became incapacitated or left that area, and would have to provide for adequate space, lighting, ventilation, and viewing, as well as the safety and dignity of the pupil and others, according to Department guidelines.

House Bill 5410 (H-1)

The bill would require the Department of Education to develop a State policy regarding the use of seclusion and restraint in the public schools that included all of the elements under Sections 1307b to 1307h (the sections that House Bills 5411 to 5417 (H-5) would enact), along with guidelines the Department considered necessary.

By the beginning of the 2017-2018 school year, the board of a school district or intermediate school district (ISD), or the board of directors of a public school academy (PSA), would have to adopt and implement a local policy that was consistent with the State policy.

A person who failed to comply with any requirements of the State policy would be considered to have failed to comply with, and to have violated, the Revised School Code. (Except as otherwise provided in the Code, a school official or member of a school board or intermediate school board or other person who neglects or refuses to do or perform an act required by the Code, or who violates or knowingly permits or consents to a violation of the Code, is guilty of a misdemeanor punishable by a maximum fine of \$500, imprisonment for up to three months, or both.)

House Bill 5411

The bill would require the State policy to include a clear statement that all of the following practices would be prohibited for school personnel in the public schools of the State under all circumstances, including emergency situations:

- Corporeal punishment, as defined in Section 1312 of the Code.
- The deprivation of basic needs.
- Child abuse.
- Seclusion, other than emergency seclusion.
- The intentional application of any noxious substance or stimulus (whether generally acknowledged or specific to the pupil) that results in physical pain or extreme discomfort.
- Mechanical restraint.
- Chemical restraint.
- Any restraint that negatively impacts breathing.
- Prone restraint.
- Physical restraint, other than emergency physical restraint.
- Any other type of restraint.

(Section 1312 defines "corporeal punishment" as the deliberate infliction of physical pain by hitting, paddling, spanking, slapping, or any other physical force used as a means of discipline.)

House Bill 5417 (H-5) would define "school personnel" as all individuals employed in a public school or assigned to regularly and continuously work under contract or under agreement in a public school, or public school personnel providing service at a nonpublic school.

"Emergency situation" would mean a situation in which a pupil's behavior poses imminent risk to the safety of the individual pupil or others. An emergency situation would require an immediate intervention.

"Mechanical restraint" would mean the use of any device, article, garment, or material attached to or adjacent to a pupil's body to perform restraint.

"Chemical restraint" would mean the administration of medication for the purpose of restraint.

"Restraint that negatively impacts breathing" would mean any restraint that inhibits breathing, including floor restraints, facedown position, or any position in which an individual is bent over in such a way that it is difficult to breathe. This would include a seated or kneeling position in which an individual being restrained is bent over at the waist and restraint that involves sitting or lying across an individual's back or stomach.

"Prone restraint" would mean the restraint of a person facedown.

"Physical restraint" would mean restraint involving direct physical contact.

House Bill 5412 (H-1)

The bill would require the State policy to include at least all of the following provisions concerning use of emergency seclusion and emergency physical restraint.

Emergency seclusion and emergency physical restraint could be used only under emergency situations and only if essential to providing for the safety of the pupil or another. Emergency seclusion and emergency physical restraint could not be used in place of appropriate less restrictive interventions.

Emergency seclusion and emergency physical restraint would have to be performed in a manner that, based on research and evidence, was safe, appropriate, and proportionate to and sensitive to the pupil's severity of behavior, chronological and developmental age, physical size, gender, physical condition, medical condition, psychiatric condition, and personal history, including any history of physical or sexual abuse or other trauma.

School personnel would be required to call key identified personnel for help from within the school building either immediately at the onset of an emergency situation or, if it were reasonable under the particular circumstances for school personnel to believe that diverting their attention to calling for help would increase the risk to the safety of the pupil or others, as soon as possible once the circumstances no longer supported such a belief.

The school district, ISD, or PSA would be required to ensure that substitute teachers were informed of and understood the procedures regarding use of emergency seclusion and emergency physical restraint. This requirement could be satisfied through the use of online training and an online acknowledgment of understanding developed or approved by the Department and completed by the substitute teacher.

Emergency seclusion and emergency physical restraint should not be used any longer than necessary, based on research and evidence, to allow a pupil to regain control of his or her behavior to the point that the emergency situation necessitating the use of emergency seclusion or emergency physical restraint was ended, and generally not longer than 15 minutes for an elementary school pupil or 20 minutes for a middle school or high school pupil. If an emergency situation lasted longer than that amount of time, both of the following would be required:

- Additional support, which could include a change of staff, or introducing a nurse, specialist, or additional key identified personnel.
- Documentation to explain the extension beyond the time limit.

While using emergency seclusion or emergency physical restraint, school personnel would be required to do all of the following:

- Involve key identified personnel to protect the care, welfare, dignity, and safety of the pupil.
- Continually observe the pupil in emergency seclusion or emergency physical restraint for indications of physical distress and seek medical assistance if there were a concern.
- Document observations.
- Ensure, to the extent practicable, in light of the ongoing emergency situation, that the emergency physical restraint did not interfere with the ability of the pupil to communicate using his or her primary mode of communicating.
- Ensure that at all times during the use of emergency seclusion or emergency physical restraint the presence of school personnel who could communicate with the pupil using his or her primary mode of communication.

House Bill 5417 (H-5) would define "key identified personnel" as those individuals who have received the mandatory training described in Section 1307g (House Bill 5415 (H-1)) for personnel who could be required to respond to an emergency situation.

"Documentation" would mean documentation developed by the Department that is uniform across the State.

House Bill 5413 (H-3)

The bill would require the State policy to include at least all of the following provisions concerning documentation and reporting of seclusion and restraint.

Each use of seclusion or restraint and the reason for each use would have to be documented in writing or orally to the school building administrator and the pupil's parent or guardian immediately, and documented in a written report for each use of seclusion or restraint, including multiple uses within a given day. The written report would have to be given to the parent or guardian within one school day or seven calendar days, whichever was earlier.

After any use of seclusion or restraint, school personnel would have to make reasonable efforts to debrief and consult with the parent or guardian, or with the parent or guardian and the pupil, as appropriate, regarding the determination of future actions. The debriefing and consultation would have to be done according to Department guidelines and documented on forms provided by the Department.

If a pupil exhibited a pattern of behavior that posed a substantial risk of creating a future emergency situation that could result in the use of emergency seclusion or emergency physical restraint, school personnel would be encouraged to do all of the following:

- Conduct a functional behavioral assessment.

- Develop or revise a positive behavioral intervention and support plan to facilitate the elimination of the use of seclusion and restraint.
- Develop an assessment and planning process conducted by a team knowledgeable about the pupil, including at least one parent or guardian; the pupil, if appropriate; the individuals responsible for implementing the intervention and support plan; and individuals knowledgeable in positive behavioral intervention and support.

House Bill 5417 (H-5) would define "functional behavioral assessment" as an evidence- and research-based systematic process for identifying the events that trigger and maintain problem behavior in an educational setting. A functional behavioral assessment would have to describe specific problematic behaviors, report their frequency, assess environmental and other setting conditions where problematic behavior occurs, and identify the factors that are maintaining the behaviors over time.

"Positive behavioral intervention and support" would mean "a framework to assist school personnel in adopting and organizing evidence-based behavioral interventions into an integrated continuum of intensifying supports based on pupil need that unites examination of the function of the problem behavior and the teaching of alternative skill repertoires to enhance academic and social behavior outcomes for all pupils".

"Positive behavioral intervention and support plan" would mean a pupil-specific support plan composed of individualized, functional behavioral assessment-based intervention strategies, including, as appropriate to the pupil, guidance or instruction for the pupil to use new skills as a replacement for problem behaviors, some rearrangement of the antecedent environment so that problems can be prevented and desirable behaviors can be encouraged, and procedures for monitoring, evaluating, and modifying the plan as necessary.

House Bill 5414 (H-1)

The bill would require the State policy to include at least all of the following provisions concerning development and implementation of an emergency intervention plan.

If a pupil exhibited a pattern of behavior that posed a substantial risk of creating a future emergency situation that could result in the use of emergency seclusion or emergency physical restraint, school personnel should develop a written emergency intervention plan to protect the health, safety, and dignity of the pupil. The plan should be developed in partnership with the parent or guardian by a team that included a teacher, an individual knowledgeable about the legally permissible use of emergency seclusion and emergency physical restraint, and an individual knowledgeable about the use of positive behavioral intervention and support to eliminate the use of seclusion and restraint. The plan should be developed and implemented by taking all of the following documented steps:

- Describe in detail the emergency intervention procedures.
- Describe in detail the legal limits on the use of emergency seclusion and emergency physical restraint, including examples of legally permissible and prohibited use.
- Make inquiry to the pupil's medical personnel, with parental consent, regarding any known medical or health contraindication for the use of emergency seclusion or emergency physical restraint.
- Conduct a peer review by knowledgeable school personnel.

The documented steps to be taken also would include providing the parent or guardian with all of the following, in writing and orally:

- A detailed explanation of the positive behavioral intervention and support strategies that would be used to reduce the risk that the pupil's behavior would create an emergency situation.

- An explanation of what constituted an emergency situation as defined in Section 1307h (House Bill 5417 (H-5)), including examples of situations that would fall within the definition and situations that would fall outside the definition.
- A detailed explanation of the intervention procedures to be followed in an emergency situation, including the potential use of emergency seclusion and emergency physical restraint.
- A detailed explanation of the legal limits on the use of emergency seclusion and emergency physical restraint, including examples of legally permissible and prohibited use.
- A description of possible discomforts or risks.
- Answers to any questions.

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

Emergency seclusion or emergency physical restraint could be used only in response to an ongoing emergency situation and not as a planned response for the convenience of school personnel, as discipline or punishment, or as a substitute for an appropriate educational program. The development of an emergency intervention plan would have to be solely for the purpose of protecting the health, safety, and dignity of the pupil and would not expand the legally permissible use of emergency seclusion or emergency physical restraint.

House Bill 5415 (H-1)

The bill would require the State policy to include at least all of the following provisions concerning data collection.

According to Department guidelines, a school district or public school academy, or an ISD program in which pupils were enrolled, would be required to collect and report data on and related to the use of restraint and seclusion in the school district, PSA, or ISD program. In collecting and reporting the data, a school district, PSA, or ISD program would have to use existing data collection and reporting systems whenever possible. Incidents of use would be required, at a minimum, to be reported by race, age, grade, gender, disability status, medical condition, identity of the school personnel initiating the use of the restraint or seclusion, and identity of the school or program where the use occurred.

On a schedule determined by the Department, the data collected should be analyzed by the school and school district, PSA, or ISD in which the pupil was enrolled as follows:

- To determine the efficacy of the school's schoolwide system of behavioral support.
- In the context of attendance, suspension, expulsion, and dropout data.
- For the purposes of continuous improvement of training and technical assistance toward the elimination of seclusion and restraint.

The school district, PSA, or ISD should report the data electronically to the Department according to its guidelines.

The Department would be required to make available redacted, aggregate data on the reported use of seclusion and restraint, compiled by school district, PSA, and ISD on a quarterly basis.

House Bill 5416 (H-1)

The bill would require the State policy to include at least all of the following provisions concerning training, which could include online training that was developed or approved by the Department.

According to Department guidelines, a school district, ISD, or PSA would have to implement a comprehensive training framework that included awareness training for all school personnel who had regular contact with pupils and comprehensive training for key identified personnel.

A school district, ISD, or PSA would have to identify sufficient key personnel to ensure that trained personnel were generally available for an emergency situation. Before using emergency seclusion or emergency physical restraint with pupils, key identified personnel who could be required to respond to an emergency situation would have to be trained in all of the following:

- Proactive practices and strategies that ensured the dignity of pupils.
- De-escalation techniques.
- Techniques to identify pupil behaviors that could trigger emergency situations.
- Related safety considerations, including information regarding the increased risk of injury to pupils and school personnel when seclusion or restraint was used.
- Instruction in the use of emergency seclusion and emergency physical restraint.
- Identification of events and environmental factors that could trigger emergency situations.
- Instruction on the State 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 was 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 for pupils with particular physical or mental health conditions or psychological limitations.
- How to obtain appropriate medical assistance.
- Cardiopulmonary resuscitation and first aid.

In addition, before using emergency seclusion or emergency physical restraint, key identified personnel should be trained in all of the following:

- Conflict resolution.
- Mediation.
- Social skills training.
- Positive behavioral intervention and support strategies.

House Bill 5417 (H-5) would define "de-escalation techniques" as evidence- and research-based strategically employed verbal or nonverbal interventions used to reduce the intensity of threatening behavior before, during, and after a crisis situation occurs.

Proposed MCL 380.1307 (H.B. 5409)
Proposed MCL 380.1307a (H.B. 5410)
Proposed MCL 380.1307b (H.B. 5411)
Proposed MCL 380.1307c (H.B. 5412)
Proposed MCL 380.1307d (H.B. 5413)
Proposed MCL 380.1307e (H.B. 5414)
Proposed MCL 380.1307f (H.B. 5415)
Proposed MCL 380.1307g (H.B. 5416)
Proposed MCL 380.1307h (H.B. 5417)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would result in additional costs to the Department of Education and to local education authorities (LEAs), which include intermediate school districts, school districts, and public school academies (charter schools).

The Department would experience costs from two sources. The first would be the development and implementation of a statewide policy on seclusion and restraint. This would include both the initial development of the policy and the creation of guidelines for LEAs to assist in training staff. Since the Department already has developed portions of this policy, those costs would likely be minimal and within current appropriations.

The second source of costs to the Department would be administrative and information technology expenses associated with collecting discipline and restraint data and reporting on its website quarterly. Since the Department already collects discipline data from LEAs, these costs could largely be covered with existing appropriations; however, requiring quarterly updated reports could necessitate minimal additional appropriations.

Local education authorities would have increased costs from developing and implementing policy, training personnel, and collecting, reporting, and analyzing data. Since most districts already have policies similar to the Department standards, the costs for modifying local policies would likely be minimal and within current appropriations.

More extensive costs would be associated with ensuring proper training of administration, staff, and key identified personnel, especially those who oversee students with disabilities. Not only would districts have initial costs for training staff on the new policies, they also would likely need to provide ongoing training to ensure that the administration, staff, and especially key identified personnel continued to adhere to the new policies and keep up-to-date on current positive behavioral intervention strategies. Many districts currently train employees on proper positive behavioral intervention strategies; however, most districts could need to allocate additional revenue to these efforts in order to adhere to the new policy and prevent legal challenges. Due to the varying differences in LEA policies and training, it is impossible to accurately estimate a total statewide cost for training.

In addition, LEAs would experience costs associated with collecting, reporting, and analyzing data. Since LEAs currently keep track of and report most of the required data, additional costs would likely be minimal and within current appropriations.

If noncompliance with the State policy led to prosecutions and convictions for violations of the Code, the bills would increase resource demands on law enforcement, court systems, community supervision, and jails. An increase in fine revenue would benefit public libraries.

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