



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5409 (Substitute H-1 as reported without amendment)
House Bill 5410 (Substitute H-1 as reported without amendment)
House Bill 5411 (as reported without amendment)
House Bill 5412 (Substitute H-1 as reported without amendment)
House Bill 5413 (Substitute H-3 as reported without amendment)
House Bill 5414 (Substitute H-1 as reported without amendment)
House Bill 5415 (Substitute H-1 as reported without amendment)
House Bill 5416 (Substitute H-1 as reported without amendment)
House Bill 5417 (Substitute H-5 as reported without amendment)
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

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. 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 5410 (H-1) would require the Department to develop the State policy and would require the board of a school district or intermediate school district (ISD), or the board of directors of a public school academy (PSA), by the beginning of the 2017-2018 school year, to adopt and implement a local policy that was consistent with the State policy.

The bill also provides that a person who failed to comply with any requirements of the State policy would be considered to have violated the Revised School Code. (Except as otherwise provided, a violation of the Code is a misdemeanor punishable by a maximum fine of \$500, up to three months' imprisonment, or both.)

House Bill 5411 would require the State policy to prohibit the following practices for all school personnel under all circumstances: corporeal punishment; the deprivation of basic needs; child abuse; seclusion, except emergency seclusion; mechanical restraint; chemical restraint; any restraint that negatively impacts breathing; prone restraint; physical restraint, except emergency physical restraint; any other type of restraint; and the intentional application of any noxious substance or stimulus that results in physical pain or extreme discomfort.

House Bill 5412 (H-1) would require the State policy to include specific provisions concerning the use of emergency seclusion and emergency physical restraint. These would include the following:

- 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.
- School personnel would be required to call key identified personnel for help from within the school building either immediately or after there was no longer reason to believe that diverting the attention of personnel to calling for help would increase the risk to the safety of the pupil or others.
- 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.

Also, 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.

School personnel would be required to take specified actions, such as documenting observations and ensuring that the pupil was able to communicate, while using emergency seclusion or emergency physical restraint.

House Bill 5413 (H-1) 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 it 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, which 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.

Also, 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; and develop an assessment and planning process conducted by a team knowledgeable about the pupil.

House Bill 5414 (H-1) 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 documented steps listed in the bill, which would include providing the parent or guardian with certain information.

Also, 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.

House Bill 5415 (H-1) 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. 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) 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 subjects listed in the bill, such as de-escalation techniques, techniques to identify pupil behaviors that could trigger emergency situations, related safety considerations, and the effects of seclusion and restraint on all pupils.

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; and positive behavioral intervention and support strategies.

House Bill 5417 (H-5) would define "seclusion", "restraint", "emergency seclusion", "emergency restraint", "emergency", "physical restraint", "chemical restraint", "mechanical restraint", "prone restraint", "restraint that negatively impacts breathing", "key identified personnel", and other terms used in the bills.

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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Fiscal Analyst: Cory Savino

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.