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1500 Union Ave., Suite 2000, Baltimore, MD 21211
www.DisabilityRightsMD.org

June 24, 2019

Via Electronic Mail

Members of the Calvert County Board of Education
1305 Dares Beach Road
Prince Frederick, Maryland 20678

Re: Proposed Policy 3215—(Students) Regarding Student Behavior Interventions: Public Comment

Dear Members of the Board of Education:

Disability Rights Maryland (DRM) has had the opportunity to review proposed policy 3215 regarding restraint and seclusion. As you may recall, we wrote to you on May 16, 2019 explaining our role as the protection and advocacy agency for Maryland, providing some information and expressing our concerns about the use of restraint and seclusion in schools, and expressing our hope that you would adopt policies that would eliminate the use of seclusion, limit restraint only to true emergency situations when students pose a risk of imminent, serious physical harm to themselves or others, and that would promote trauma-informed interventions and evidence-based positive behavior supports. A copy of our May 16th letter is attached for your reference.

We write now to comment on Proposed Policy 3215 regarding student behavior interventions. We have the following comments:

I(C): We support the development of a detailed plan to eliminate the use of restraint and seclusion. However, the provision does not contain any deadline or goals by which this will be accomplished. We strongly recommend that the policy be revised to include a deadline for development of the detailed plan, and that the policy set parameters for the plan, including that the plan itself must have deadlines by which restraint and seclusion will be eliminated and that the plan contain interim measurable milestones for reduction of restraint and seclusion so that the goal of elimination of these aversive behavior techniques can be eliminated by the beginning of the 2021-22 school year. We further recommend that the school system be required to report publicly on its implementation of the plan on a regular basis so you and all who are interested can assess the district's progress towards reduction in the use of restraint and seclusion.

II(F): The proposed policy proposes to prohibit seclusion unless "there is an emergency situation and seclusion is necessary to protect a student or other person from serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate AND the student's IEP describes the specific behaviors and circumstances in which seclusion may be used AND the parent has provided written consent."

This proposed section is inconsistent with the revised COMAR provision that became effective in 2018, which provides that once seclusion has been used in an emergency situation or school personnel have made a "student-specific determination that it may need to be used" consistent with the emergency

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“serious physical harm” standard, “seclusion may be included in a student’s behavioral intervention plan or IEP to address the student’s behavior in an emergency situation, provided that school personnel:

- (a) Review available data to identify any contraindications to the use of seclusion based on medical history or past trauma, including consultation with medical or mental health professionals as appropriate;
- (b) Identify the less intrusive, nonphysical interventions that will be used to respond to the student’s behavior until seclusion is used in an emergency situation; and
- (c) Obtain written consent from the parent, consistent with Education Article, §8-405, Annotated Code of Maryland.” COMAR 13A.08.04.05(B)(2).

This same provision applies in the context of restraint as well. COMAR 13A.08.04.05(A)(1)(b). Currently, DRM is all too aware that restraint and seclusion are often used in situations when the “imminent serious physical harm” standard is not met, when school staff have escalated rather than de-escalated student behavior, or when school staff simply do not have the training to provide appropriate positive behavior supports to a student to prevent a crisis. It is important not only that Calvert County’s align correctly with Maryland regulations, but also that the policy clearly and unequivocally make clear that restraint and seclusion should be viewed as highly extraordinary interventions to be used sparingly and only in true emergencies, not routine techniques to be used at will.

We further believe it would be helpful to incorporate the definition of “imminent serious physical harm” from the Maryland State Department of Education’s guidance document, which is based on federal law. This definition states: “Serious physical harm” means an injury that results in:

- (1) A substantial risk of death;
- (2) Extreme physical pain;
- (3) Protracted and obvious disfigurement; or
- (4) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty in accordance with 18 U.S.C. §1365(h)(3).

As we noted in our May 16th letter, restraint and seclusion are traumatizing to staff and students, and there is no evidence to support their effectiveness in the education setting. As we also noted in our letter, good educational practice reduces the likelihood of a crisis, and we urge Calvert County, in addition to revising and adopting Policy 3215 and working to eliminate the use of restraint and seclusion over the coming school year, to look at the underlying reasons why staff have relied so heavily on the use of restraint and seclusion and address these reasons by providing sufficient training and support to staff, and by promoting trauma-informed care and positive behavior supports.

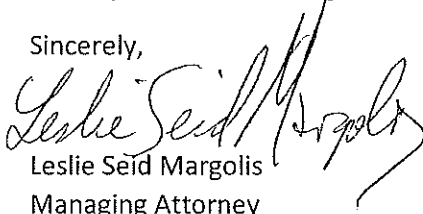
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Disability Rights Maryland remains available to serve as a resource to you in this important endeavor.
Thank you for considering our comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leslie Seid Margolis". The signature is written in black ink and is positioned above the printed name.

Leslie Seid Margolis
Managing Attorney

Enclosure